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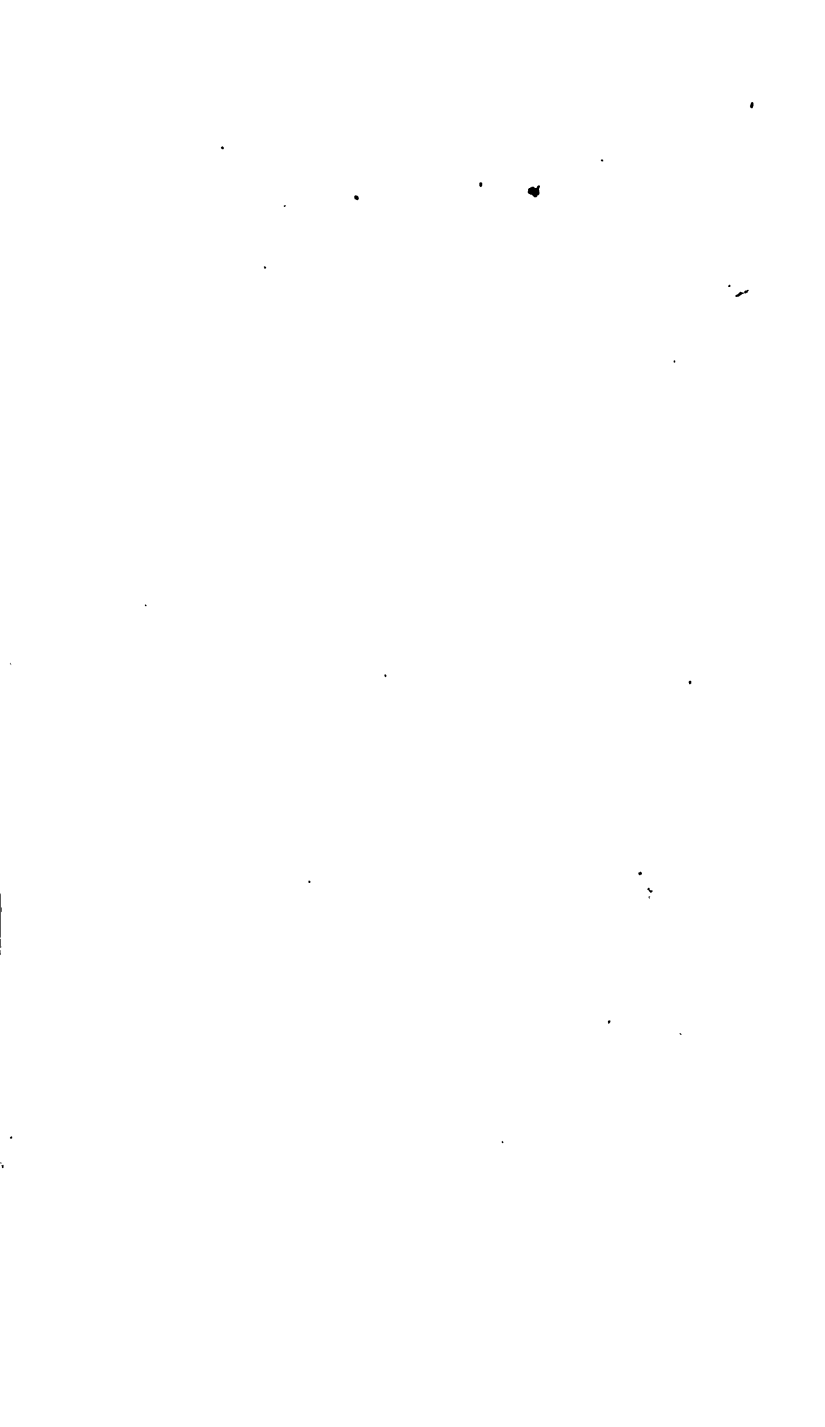
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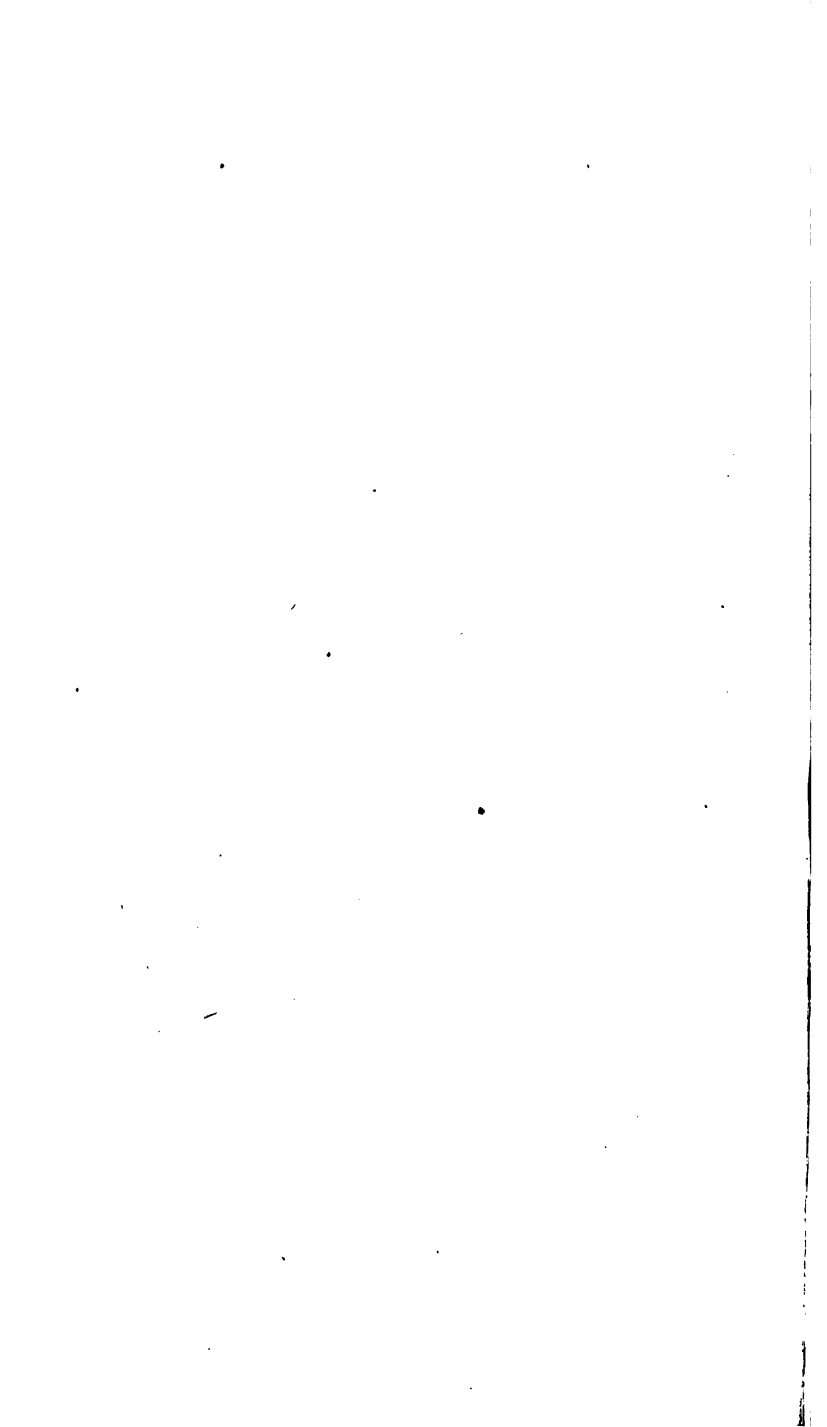


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HISTORY 2.11.24.2
OF
THE RESISTANCE
TO THE
ANNUITY TAX

UNDER EACH OF
THE FOUR CHURCH ESTABLISHMENTS
FOR WHICH IT HAS BEEN LEVIED;
WITH A
STATEMENT OF ITS ANNUAL PRODUCE SINCE 1690.
FROM AUTHENTIC DOCUMENTS.

BY DUNCAN MACLAREN.

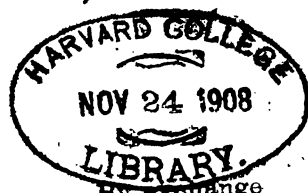
"One fact is worth a ship-load of arguments."

EDINBURGH:
ADAM & CHARLES BLACK, NORTH BRIDGE.

M.D.CCC.XXXVI.

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EDINBURGH :

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P R E F A C E .

How is that, when singled-handed Truth walked through our island with the might and prowess of a conqueror, so soon as propped by the authority of the State, and the armour of intolerance was given to her, the brilliant career of her victories was ended? IT WAS WHEN SHE TOOK UP THE CARNAL AND LAID DOWN THE SPIRITUAL WEAPON; IT WAS THEN THAT STRENGTH WENT OUT OF HER. She was struck with impotency on the instant that, from a warfare of principle, it became a warfare of politics.—

It is not because I hold Popery to be innocent that I want the removal of these [CHURCH ESTABLISHMENTS;] but because I hold, that if these were taken out of the way, she would be tenfold more assailable. It is not because I am indifferent to the good of Protestantism that I WANT TO DISPLACE THESE ARTIFICIAL CRUTCHES FROM UNDER HER; but because I want that, freed from every symptom of decrepitude and decay, she should stand forth in her own native strength, and make manifest to all men how firm a support she has on the goodness of her cause, and on the basis of her orderly and well laid arguments. It is because I count so much—and will any Protestant say that I count too much?—on her Bible, and her Evidences, and the blessing of God upon her Churches, and the force of her resistless appeals to the conscience and the understandings of men; it is because of her strength and sufficiency in these that I would disclaim the aids of the statute-book, and own no dependence or obligation whatever on a system of intolerance. THESE WERE ENOUGH FOR HER IN THE DAYS OF HER SUFFERING, AND SHOULD BE MORE THAN ENOUGH FOR HER IN THE DAYS OF HER COMPARATIVE SAFETY. It is not by our fears and our false alarms that we do honour to Protestantism. A far more befitting honour to the great cause is the homage of our confidence; for what Sheridan said of the liberty of the press, admits of most emphatic application to this religion of truth and liberty. “Give,” says that great orator, “give to Ministers a corrupt House of Commons; give them a pliant and a servile House of Lords; give them the keys of the Treasury and the patronage of the Crown; and give

me the Liberty of the Press, and with this mighty engine, I will overthrow the fabric of corruption, and establish upon its ruins the rights and privileges of the people." In like manner, give the Catholics of Ireland their emancipation; give them a seat in the Parliament of their country; GIVE THEM A FREE AND EQUAL PARTICIPATION IN THE POLITICS OF THE REALM; give them a place at the right ear of Majesty, and a voice in his counsels; and give me the circulation of the Bible, and with this mighty engine, I will overthrow the tyranny of anti-Christ, and establish THE FAIR AND ORIGINAL FORM OF CHRISTIANITY ON ITS RUINS.

The delivery of this splendid passage, which was given with prodigious force, elicited a burst of applause so deafening and enthusiastic, that the effect was altogether sublime. The shouts and huzzas were thrice renewed, and it was with difficulty the speaker could proceed."—Such is the account given, in the authorised publication, of the effect produced by the powerful and truly eloquent speech of the Rev. Dr. Chalmers, in favour of Catholic Emancipation, of which these passages are extracts—with the alteration of only *one word*—the substitution of "Church Establishments" for "disabilities." They express the opinion of the Author of this pamphlet, in regard to the injurious effects of Church Establishments, in language infinitely superior to any thing which he could produce. The portrait is sketched by the hand of a master. The likeness will be instantly recognised by every careful observer.

Entertaining these sentiments, in the following pages, he has occasionally endeavoured to point out some of the injurious effects which have flowed from the Compulsory support of Religion; but he has not allowed his opinions to interfere with the duty which he has undertaken—that of writing a faithful narrative of facts. If he has inadvertently fallen into any errors, he will gladly correct them when they are proved to exist.

In consequence of the number of conflicting statements which have appeared on the subject of the Annuity Tax, whenever the Author has met with an account of any matter relating to it, stated by other parties, in a manner which his own researches had led him to consider substantially correct, he has preferred quoting the passage and authority to embodying the information in his own words, believing this course to have many advantages, especially with an anonymous publication like the present.

HISTORY

OF THE

ANNUITY TAX.

BEFORE referring to the history of the Annuity Tax, it may be useful to take a rapid view of the state of ecclesiastical matters in Edinburgh, from the Reformation till 1634, when it was first authorised to be levied.

“ The Church in *Edinburgh* having been under the hierarchy of Papists till the year 1560, Popery was then abolished by an act of the states of the kingdom assembled in this city; and the Confession of Faith presented to them, being approved, ushered in a New Church Polity on the Protestant plan, which was confirmed in the first Parliament of King *James VI.*, held in *Edinburgh* in the year 1567.”*

“ The Clergy of Edinburgh appear to have been supported from the time of the Reformation, partly from the common funds of the city, aided by assessments and VOLUNTARY CONTRIBUTIONS, and partly from the rents of property, which, in Catholic times, had formed the endowments of altarages, chaplainries, and prebends in the city churches, and were granted to the community by Queen Mary, and James VI., for the support of the ministers, and of the schools and hospitals within the city. The insufficiency and precarious nature of these supplies rendered various expedients necessary to make up for the deficiency of tithes in a district of which comparatively little remained for agricultural purposes.”†

“ The history of the various provisions for the support of the Ministers of the Protestant religion in Edinburgh, from the date

* Maitland's History of Edinburgh, page 273.

† Report of Burgh Commission, page 224.

of their first establishment after the Reformation in 1560, to the year 1665, is extremely curious, and can be fully supplied from the Records of the Town Council; but it seems to have no relevancy to the present question. At first the renowned JOHN KNOX was the only Minister in this city; and *the highest stipend he ever held for all his labours*, was 400 merks, or £22, 4s. 5d. ! but in a few years there came to be in all three Ministers of the reformed religion here.”*

The Ministers notice this circumstance in their answers :—
 “As to the fact that is stated, the Memorialists [Ministers] have only to say, that John Knox *did not live entirely by his stipend*; and at all events, to express their fears that though he had done so, if he had been accustomed *to behave as tamely* as their predecessors have unfortunately done, he would not even have got his £22, 4s. 5d. However they doubt if they, even by succeeding in this process, will get more now than he, relatively to the times he lived in, enjoyed during his life. *He drew from his own pipe of claret the day before he died.*† Have the Memorialists much chance of this?”‡

“In the year 1588, one minister was judged sufficient for a parish [of] which [there] were only four in *Edinburgh*. This being a time of great dearth, the ministers’ stipends were insufficient to maintain them and families. They petitioned the Common Council for an augmentation; which being granted, to each of the two first were added, £5, 11s. 1d. *sterling* yearly; to the third, £2, 16s. 6d.; and to the fourth, £1, 1s. 8d; whereby their stipends were raised to £33, 6s. 8d., £27, 5s. 6d., and £19, 18s. 4d. yearly. But *Bruce*, the first minister, who had the largest stipend, it seems, not being satisfied therewith, threatened to leave the town. The Common Council guessing at the reason, augmented his stipend to £55, 11s. 1d., which the very mercenary creature was graciously pleased to accept of,

* Pleadings of the Magistrates in the process between them and the Ministers, respecting the property of the Annuity Tax, which was carried on from 1810 to 1814, with the Opinions delivered by the Judges of the Court of Session on the subject, which have been preserved by the City clerks, page 29. Reference is frequently made to this volume. In the quotations the sums have generally been converted from Scotch into Sterling money.

† Did the Ministers mean that John Knox, in addition to his stipend, was so liberally supported on the *Voluntary principle* that he was able to drink from his own pipe of claret daily? If so, why did they not trust to the efficiency of the same principle, and thus increase their “chance” of being able to drink their claret as freely and as frequently as John Knox?

‡ Answers by the Ministers in the process with the Magistrates, page 45.

although it only amounted to, £6, 12s. 9d. *per annum* more than those of his three brethren put together,* as already observed! whereby is verified the saying, *I seek not you but yours*. From this time the ministers of *Edinburgh's* stipends appear to have been in a very fluctuating condition, by their being risen or fallen, according to the town's circumstances."†

ORIGIN OF THE ANNUITY TAX.

"In the year 1597, *Edinburgh* was, by an act of Common Council, ordered to be divided into eight parishes, and the College of Justice to pay £55, 11s. 1d. yearly; and in case of non-payment, the amount of the said sum to be deducted from the stipends of the several ministers, who were then eight in number."

"This act of Common Council not being carried into execution, King Charles I., soon after his accession to the throne, resolved to settle church affairs in *Edinburgh* according to his late father's plan of articles; wherewith he was so well pleased, that he sent a letter to the Lord Chancellor, and others of his Privy Council in *Scotland*, setting forth, that his late father, King *James*, had, for the regulating Church affairs in *Edinburgh*, caused draw up certain articles, for dividing the said town into parishes; and commanded the said Lord Chancellor to deliver the same to the Magistrates, and strictly to enjoin them, to take them forthwith into consideration, and return an answer thereto without delay."‡

These articles are recorded in the Minutes of the Town Council, of date 2d March, 1625. The first article required the Town Council to observe that "order to be taken for distributing that multitude into *several congregations*, with the greatest equality that may be had;" thus anticipating the theory of the Rev. Dr. Chalmers' about the parochial system by more than 200 years. The Council agreed to this article.

* This is evidently an error in the calculation. The stipend must have been augmented to £55, 11s. 1d., *over and above the original stipend* of £33, 6s. 8d., before it could exceed the stipends of his three brethren, by the amount stated.

† Lest it should be thought that a sneer at any of the present ministers is intended by this quotation, it may be proper to state that the italics and punctuation are copied without alteration from the historian.

‡ *Maitland's History of Edinburgh*, page 374.

Article H. required the division to be made into *four* parishes, with *two* ministers to each, which was also acceded to, and hence the origin of the *collegiate charges*, which are at present so much complained of, as entailing an unnecessary burden on the community. As Article III. contains the first proposal for the imposition of the Annuity Tax, we shall quote it and the answer at length.

Art. III. "These ministers must be provided of houses to reside in, within their several parishes, which shall be known to be the houses of the Church; and with maintenance sufficient, which in that town can be no less than £111, 2s. 2d. to every minister, and ought to be paid in all reason, by the people that live under their cure. This may be done either by imposing a certain ANNUITY upon every house and tenement within the parish, as is done here at London, and in well-ordered cities, or by some other convenient means that may be devised; and till this take effect, the town must bear the charge of the whole."

The Town Council of 1625, appear to have had the same dislike to the Church Extension scheme of King Charles, which their successors of 1835 had to the Church Extension scheme of Dr. Chalmers, by which he proposed to erect five new churches within the royalty; but they thought it more prudent to give his Majesty's proposal a courteous answer than to reject it altogether, as this latter course might have had an injurious effect on their claims for additional privileges, which they had resolved to append to their answers. Accordingly they evaded the proposal with considerable ingenuity, as appears from the following answer:—

"Answer.—It is answered to the third article :—And first, to the first part of the same,—That the town's houses, which they in the kirk-yard being three in number, being filled and occupied, viz.—two of them by the ministers of parish; and the third with one of the ministers of parish; and to provide the remanent to houses, to ilk minister in his own parish. And to the second part thereof, it is answered,—That the ministers of this burgh are provided, each man with a sufficient house to dwell in, mail [rent] free, with a yearly stipend of £66, 13s., thankfullie paid to them, conform to the agreement made with them at their entry to their charges, and since the common good is not able to sustain the burden alreadie imposed thereupon, and of reason, ought not to be thrall'd to the payment of the ministers' stipends; and that the augmentation

desired both in matter and manner, does crave mature advisement, they most humbly entreat his majesty to pardon them that they cannot give answer to the same at this present; and to spare the same till the rest of the articles be first discussed, and the distribution desired in manner contained in these articles and answers, under the same annexed, be first settled and brought to perfection."

It will be observed, that in their answer, they did not say one word about the proposal made by his Majesty for the imposition of the Annuity Tax, from which it may be inferred that they neither relished the proposal themselves, nor thought it likely to be relished by the inhabitants. All the articles and answers, eight in number, are curious, especially articles VI. and VIII., which require the strict observance of the parochial system, as at present advocated; with this difference, that in 1625, it was made *imperative* on the parishioners to attend their respective parish Churches, while in 1836 they are left to the freedom of their own will, after being warned that they will derive greater benefit from attendance at their own parishes Churches, than from attendance at any other place of worship. To enforce the observance of this law, a penalty of £1, 13s. 4d. sterling, was imposed, by authority of the Town Council, at the suggestion of his Majesty, on "such as *doe not communicate* in their own parishes, *or shall go out of the town to other communions*, without the licence and testimony of their ministers:" but as these matters are not immediately connected with the Annuity, it is not necessary to pursue the subject. Charles appears to have been delighted with the attention of the Town Council to his articles, and under date of 19th Oct. 1625, writes to them, that he is "glad to understand that such a good beginning is made in that work, which our dear father so earnestly desired."*

Matters appear to have remained in this state until 22d April, 1633, when the Town Council appointed a Commissioner to his Majesty, for the purpose of getting the proposed arrangement about the Annuity Tax carried into effect. It is curious to observe, that this Minute assigns as the reason why all the inhabitants should be taxed for the support of the Church, *that they all derive the benefit* of "hearing the word." The sentence which is printed in capitals;

* Maitland's History of Edinburgh, p. 280.

contains in a few words, an admirable summary of voluntary principles, and affords a strong presumption that if, as at present, one half of the inhabitants had been dissenters from the Established Church, the Town Council of 1633, would never have applied for power to assess the whole population, for, according to the principles laid down in their excellent Minute, the Dissenters who neither "hear the word" nor "receive the benefit of the Church," *ought not* "to pay for the same." The Minute is as follows:—"The same day ordains their Commissioner to his Majesty, to deal with his Majesty for an warrant for causing the hail inhabitants within this burgh, without exception, except the Lords of Council and Session, allenarly, to contribute the sum of 10,000 merks for part of payment of the ministers' stipends, with *an thousand merks or twa for ingathering thereof*, according and proportionally to the quantity of the maills [rents] they pay, or the houses where they dwell may reasonably pay, SINCE OF REASON WHO HEARS THE WORD, AND RECEIVES THE BENEFIT OF THE CHURCH, OUGHT TO PAY FOR THE SAME, and the Provost and Bailies to set down the same by certain sworn men, sworn yearly to that effect, and to gather in the same, to be applied only to the said use, with power to them, *brevi manu, to poynd or ward for the same*, and to declare who shall be called indwellers."*

While the arrangements for the imposition of the Annuity, were in progress, Charles had other benefits in store for the Church. Episcopacy being the established religion, he was graciously pleased to give the inhabitants of Edinburgh the benefit of a resident Bishop; and, accordingly, he wrote to the Town Council from Whitehall, under date of 11th October of the same year, as follows:—"Whereas of our princely motive and zeal for the advancement and government of the Church, of that, our kingdom, we have, by the advice of the chiefest of our clergy thereof, erected at our charges, a Bishoprick of new, to be called the Bishoprick of Edinburgh." "And whereas to that purpose, it is very expedient that St. Giles' Church, (designed by us to be the Cathedral Church of that Bishoprick,) be ordered as is decent and fit for a church of that eminence, and according to the first intentions of the erectors and founders thereof," and not to be "disjoined by walls and partitions as now it is." "Our pleasure is that with all diligence you cause, raze

* Records of Town Council, vol. 14, fol. 265.

to the ground the east wall of the said Church, and sicklyke that you cause raze to the ground the west wall therein, betwixt this and Lamas ensuing."* Thus the parish Churches were destroyed, and the Cathedral restored.

"For the good government of this new bishoprick, by the charter of foundation, it was to consist of a bishop, a dean, and twelve prebendaries, to whom, and their successors, the king granted the churches of St. Giles',† Greyfriar's, Trinity College, and that of the south-east parish in Edinburgh, with those of Holyrood-house, Dalkeith, Dunbar, Haddington, and Tranent, in the county of East Lothian, Liberton in Mid-Lothian, Falkirk, in Linlithgowshire, and that of the town of Stirling, in Stirlingshire, with their appurtenancies."‡

FIRST ACT IMPOSING THE ANNUITY TAX.

In six months after the establishment of the bishopric of Edinburgh, (18th March 1634,) *the ANNUITY TAX, was for the first time, authorised to be imposed, by an Act of the Privy Council.* It appears that the Town Council had framed the act, which they presented to the Parliament in June, 1633, when it was remitted by the Parliament to the Privy Council, with full powers "to decern, statute, and determine therein as they shall think expedient for the good and weel of his Majesty's lieges."

The following are the most important clauses in the act, 1634, which, like the minute on which it was founded, contains sound Voluntary principles. The act is copied from the Appendix to the Pleadings of Ministers in their action with the Town Council :—

"For sae meikle as *there is nothing more consonant to equitie and reason* than that all such persons that dailie enjoy in plentie that blessing of the word of God, and heares the same preached,

* Maitland's History of Edinburgh, page 281.

† "In the year 1661, the revenues of St. Giles' Church, arising from the Parishes of the Eastern and Western Weems, Simpelshaw, Brotherstanes, Gogar, and Dunberry; together with the ground-annuals, and feu-duties from other places, amounted to the yearly sum of £210, 14s. 1d. sterling, out of which, being deducted the several sums payable for Ministers' Stipends, Communion Elements, and other necessary expences; the sum remaining is only £135, 14s. 0½d.; being three-fourths of the said money."—Maitland's History of Edinburgh, page 283.

‡ Maitland's History of Edinburgh, page 290.

and does participat the benefit of the Clergy, should contribute to the maintenance of the ministrie in these places where they take the foresaid benefit. And our Soverand Lord and Estates of this present Parliament, understanding that ever since the Reformation, *the whole inhabitants of the said burgh of Edinburgh has enjoyed the foresaid benefits* and blessings, and the common good of the town, which has been given to them for maintenance of police, has been that way employed, through the inlaick of other sufficient means for entertaining the ministrie of the said burgh, For remeid whereof, and to the end THAT THESE WHO SERVE AT THE ALTAR, MAY BE ENTERTAINED AFF THE ALTAR, and the said common good may be rightly applied *to the use whereunto the same has been appointed,* Our Soverand Lord and Estates foresaid, STATUTE and ORDAIN that the sum of £666, 13s. 4d. shall be uplifted yearlie of the whole inhabitants and indwellers within the said burgh, (the Lords of his Majestie's Counsell and Session being onlie excepted,) and that, according to the quantity and proportion of the maills which they pay, or the houses where they reside may pay." "And ordains the said sums to be ingathered to be applied only for sustentation of the said ministrie."

One would suppose from the tenour of this act, that the framers of it, if not Voluntaries in practice, were at least decided Voluntaries in principle, for the justice of the assessment is supported solely on the ground, that those persons who derived instruction from the preaching of the ministers, were under a moral obligation to support them at their own expence. This was a distinct recognition of the Voluntary principle, and implied all that Dissenters at present contend for. If the Churchmen of 1836 will adhere to the principles of the Churchmen of 1634, as embodied in the preamble of this act, the most clamorous of the ultra-Voluntaries will be perfectly satisfied. If the ministers of Edinburgh, and the other "friends of the Church," will be satisfied with levying the Annuity Tax only from such persons as enjoy the advantages "of the Word of God, and hear the same preached, and *does participate in the benefit of the Clergy,*" for whom it is exacted, the Voluntaries will be silent. If they will admit with their brethren of 1634, that persons "should contribute to the maintenance of the ministry *in those places where they take the foresaid benefits,*" the Voluntaries will have no grievance left for which to agitate.

Much has recently been said about the "apostacy" of the

Secession Church, because 100 years ago, many of its members held opinions which their descendants do not now entertain; but what shall we say of the "apostacy" of the Established Church in acting so directly in opposition to the liberal principles which their ancestors embodied in this act 200 years ago, as to imprison Messrs. Russell and Chapman for payment of the Tax, although it was perfectly notorious that they *did* "contribute to the maintenance of the ministry in these places *where they take the foresaid benefit*" of hearing "the word of God" preached, and although it was equally notorious that they *did not* "participate in the benefit of the Clergy" for whom the Annuity Tax was levied. Will those ministers of Edinburgh who, in speeches at public meetings, and in essays in Magazines, have endeavoured to prove that the Ministers of the Secession Church are "apostates," because they do not hold all the opinions which were held by their predecessors, in the ministry of that Church,—will they abide by all the principles which *their* predecessors of the Established Church laid down, in this Act of Parliament, and in the minute of Council on which it is founded? Will they abide by the principle "THAT THOSE WHO SERVE AT THE ALTAR MAY BE ENTERTAINED," *not off* the Annuity Tax, but "OFF THE ALTAR?" Will they abide by that *fundamental principle* on which the Annuity Tax was originally established, that they "WHO HEAR THE WORD AND RECEIVE THE BENEFIT OF THE CHURCH OUGHT TO PAY FOR THE SAME?" Will they, in accordance with the same principles, be satisfied with the amount of the Annuity Tax which is levied from their own hearers? Will they agree to keep their hands out of the pockets of Dissenters, who *do not* "hear the word," or "receive the benefit of the Church," *from them*; but who, at the same time, in accordance with the principles of the Established Church of 1634, *do* "contribute to the maintenance of the ministry in these places where they take the foresaid benefit?" Until they agree to act in accordance with these principles, they should shut their eyes and seal their lips on the alleged "apostacy of the Secession;" and they may be assured that whenever they give full effect to the principles of *their* predecessors, they will instantly put an end to all agitation on the subject of the Annuity Tax. Perhaps we shall be told that the Parliament, the Privy Council, and the Town Council of 1634, were all Episcopalians, and that the Presbyterian Church, although now established by law, as Episcopacy was at the period referred to, is

not bound to follow out to their legitimate consequences the liberal sentiments embodied in this act by their predecessors of the *law Church* for the time being. Whatever answer or apology may be made for the Church of 1836, it is not a little surprising considering the liberal sentiments embodied in the preamble of the act, that the concluding clause should contain such anti-Voluntary sentiments as the following :—“ And in case of refusal of any person, ordains the Provost and Bailies to direct their officers to *poind their goods* or ward [imprison] their persons for the same, without any farther sentence or process at law.” But our surprise will cease when it is considered that the compulsory principle is *necessarily* connected with the existence of an Established Church.

It appears from Maitland, that when the survey for imposing the Annuity under this act, was made, there were 5071 houses in the city, the yearly rent of which was £16,009 *sterling*. Allowing five individuals to each house, which would not be too many for a city composed of a fair proportion of the different classes, including the numerous retainers of the aristocratical families, the population, at this period, must have amounted to 25,355, the city being divided into four parishes.*

It will be remembered, that in 1637, being only three years after the passing of this act, the reading of the New Service Book was introduced, for the first time, in St. Giles' Cathedral, when Janet Geddes commenced an attack on the Established Church, of that day, by throwing a stool at the head of the Bishop of Edinburgh, which was so effectually followed up, that in two years thereafter the Establishment was overthrown.

“Episcopacy being abolished in Scotland, Anno 1639, Presbytery was established in its stead, and continued to be the National Church till the year 1660, when both Monarchy and Episcopacy were restored by King Charles II., and the Presbyterian Hierarchy subverted.”†

In 1644 an Act of Parliament was passed, ratifying to the City

* This is as great as the population of the same district in 1836. In 1831 the population of the ancient royalty was upwards of 28,000; but from the operations of the improvement commissioners, in taking down houses for the new approaches, and other causes, it is now estimated at not more than 25,000. In 1835 there were only about 6000 houses and shops assessed for Annuity and Poor's money, including both the ancient and extended royalty, and the rental for the *Annuity Tax Survey* was £160,806.

† Maitland's *History of Edinburgh*, p. 281.

of Edinburgh their rights to the Bishopricks of Edinburgh and Orkney, and Deanery of Edinburgh, which had at different periods been conferred upon them, "for the help and supply of the maintenance of the ministers of the said burgh," and for "the help and supply of the maintenance of King James' College, situated within the said burgh of Edinburgh." The grant is stated to have been made in consequence of "their advancing great sums of money" in "*repairing the auld Kirks of the same, and in bigging of new Kirks,*" and for repairing and building the College.*

SECOND ACT IMPOSING THE ANNUITY TAX.

In 1648, the Town Council and inhabitants resolved to increase the number of their ministers, and in order to provide sufficient stipends, they agreed to apply to Parliament for leave to increase the amount of Annuity from 12,000 to 19,000 merks. The minutes of the Town Council of 20th February, as quoted by the Ministers in their process with the Magistrates, bear that "The whilk day the Provost, Bailies, Dean of Guild, Treasurer, Councill, and Deacons of Crafts, being convened in Council within the *Parliament House* of this burgh, together with *a great number of neighbours* of the same." This *public meeting* of the inhabitants, for such it appears to have been, recognised the justice of the voluntary principles laid down by their predecessors of 1634, although they did not follow them out to their legitimate conclusions. They took into consideration "the great and heavy burdens lying on the Town, disabling them from entertaining so well their ministers, and so many of them as are necessary for so great a multitude; and considering how necessary it is to plant speedily this town with an competent number of able ministers, and *for their encouragement to come*, to let them know how they shall be maintained, and on the other hand, *how agreeable it is to conscience and reason* that all those who possess dwelling houses and enjoy the benefit of God's ordinances in the good town, besides other accommodations, *should contribute*

* "The town afterwards surrendered to the Crown, that bishoprick and deanery, and had in exchange a grant of an impost on wine and other liquors vended in Edinburgh, and the adjacent parishes, which, in the Parliamentary Ratification of a grant of the same kind to the city, was declared to be 'in order to the payment of one part of their ministers' stipends.'"—*Report of Burgh Commissioners*, page 295.

willingly to the entertainment of God's servants, who dispense the same," resolved to have twelve ministers, six of them to be paid from the funds of the city, and six from the produce of the Annuity, which they agreed to apply for power to increase. The exemption granted to the Court of Session by the Act of 1634, was felt by the meeting to be a grievance which ought to be redressed, and accordingly they resolved to apply to the "Committee of the Estates, and the Parliament of their Lordships concurrence and assistance to *remove all obstructions*, and to settle this cause in an effectual and universal way, that the poor and the trades have no reason to complain that they are burdened, while others far more able, and reaping the same benefits of the ordinances, are spared, upon any pretence whatsoever." It appears from this quotation, that "the poor and the trades" of 1648, felt themselves "burdened" by the Established Church, as the same classes are burdened at the present day, "while others far more able, [the College of Justice] are spared," and derive advantages from the Church, for which "the poor and the trades" are compelled to pay in the Annuity Tax levied on their shops and workshops, as well as on their dwelling-houses. The pretext for the support of an Established Church has always been the benefit of "the poor and the trades," but these classes were sufficiently sharp-sighted nearly 200 years ago, to perceive that the Church was supported for the benefit of the rich; many of whom did not pay any thing for its support, while they were always burdened.

1649 In terms of these resolutions, an Act of Parliament was applied for and obtained, authorising nineteen thousand merks to be raised, (£1055, 11s. 1d.) by an Annuity, at the rate of five per cent., for the stipends of six ministers, and abolishing the exemption which the College of Justice had enjoyed since 1634. This act is dated 2d March 1649. It narrates "the constant affection of the good town of Edinburgh to religion," their zeal for providing a sufficient number of pious ministers, and "the *vast charges* they have been at in the *building of their kirks*, and other public works," and in "the promoting the reformation, and the great losses they have sustained since these great troubles and distractions." Therefore, "do ratifie and approve the Act of the Council of the said good town of Edinburgh, with the advice and concurrence of their neighbours, upon the 20th October last by-past, concerning their resolutions to have twelve ministers constantly within the said

burgh. As also, do ratifie and approve the said act of the late Committee of estates, of the 28th day of December last, for yearly imposition of the sum of 19,000 merks (£1055, 11s. 1d.) upon the house mails within the said burgh, to be a constant provision for *six of the twelve ministers* of the said burgh, with the alterations and additions following:—And the Estates of Parliament considering, That the providing and maintaining of the said *six ministers* doth concern the worship of God, and tend to the propagating and maintaining thereof in the chief city of this kingdom, *from which none that ARE PARTAKERS OF SO GREAT A BENEFIT, will, in conscience, withdraw or exerce themselves without great guiltinesse before God*; Therefore, the said Estates of Parliament, Do hereby statute and ordaine, that the yearly stipend of *six ministers* be imposed and laid upon the whole rents and mails of all the dwelling-houses, chambers, booths, cellars, and all other houses, high and low, paying mail within the said town, Whilk imposition shall be paid by the inhabitants and possessors, And that *without any exemption or exception of any house of whatsoever holding or nature they may be of, or of any person or persons of whatsoever degree, quality, or place they be of, upon any PRIVILEGE OR PRETENCE WHATSOEVER*. And that the said imposition may be certain and effectuell, It is ordained, that upon every hundred merks of mail throughout the whole town, the annuitie of five merks be imposed upon the whole rents and mails foresaids, That thereby the sum of 19,000 merks (£1055; 11s., 1d.) may be made up yearly, to be a constant provision to *six ministers* within the said burgh, That every one of the saids six ministers may have yearly the sum of £150 *sterling* for his stipend, and £22, 4s. 5d. *sterling* for his house mail, and the £22, 4s. 5d. remaining to be allowed for the *waste* house mails, and for the collection of the said imposition." It also declares, "that the said imposition shall *always be collected by the Deacons of the Kirke*, to be delivered to the Treasurer of the Kirk Sessions, and is not to come into the hands of the Town Council, nor to be applied to any other use nor is above written."⁵

THIRD ACT IMPOSING THE ANNUITY TAX.

On the 19th June, of the same year, (1649,) another act was passed, declaring that "the Estates having now found by the

* Thomson's Acts of the Parliament of Scotland, vol. 6, page 460.

value of the whole house mails, truly and faithfully taken upon diverse surveys of sworn men, and now at last by an exact survey of the Elders and Deacons of the Sessions, with the advice of the Dean of Facultie, and other Members of the Colledge of Justice, that the annuity of five on the hundred, will not make up the said sum of 19,000 merks, doe judge it necessary towards the maintenance of six ministers, that the quota of the said Annuity be augmented one merke more upon every hundred: And therefore do hereby decern and ordain that an annuitie of six merks be imposed upon every hundred merks of the mails and rents: "Requiring and commanding the Deacons of the Kirke to collect presently, and gather the foresaid Annuitie of six of every hundred of the said mails and rents."

It may be thought by some that the clause appointing the Deacons of the Kirk collectors, had the effect of taking the management entirely out of the hands of the Town Council; but it could not have this effect, because it appears from the answers of the Town Council to the articles of King Charles, that in 1625, the Magistrates were *ex officio* members of the Sessions, and that all the other elders and deacons were *elected yearly* "in every parish by the Provost, Bailies, and Council of this burgh, and ministers of the said parishes, in the month of December."† The Sessions were also forbidden to make any act until it was first approved of by the Town Council, except carrying into effect Acts of Parliament, and of the Church, so far as they concerned their jurisdiction. Thus the alliance between the Church and the State, was as complete and apparently as firmly cemented, as the most ultra Churchmen could desire. If any change in the composition of the Sessions took place betwixt 1625 and the passing of this act, no trace of it is to be found in Maitland.

"By all these enactments the Tax, for the support of the six Clergymen, was made leviable by the ecclesiastical officers, that it might not be mixed up with the revenue to be applied to the common municipal purposes; but this mode of collection appears not to have been effectual. A few years afterwards, the Parish Sessions humbly desired the Magistrates 'that they would be pleased to give their concurrence, with the several Deacons, for collecting and ingathering the Annuity, which VERY MANY DOETH REFUSE TO ANSWER EXCEPT THEY BE COMPELLED BY THE AUTHORITY OF THE MAGISTRATES.' Heavy deficiencies had

* Thomson's Acts of the Parliament of Scotland, vol. 6, page 462.

† Maitland's History of Edinburgh, page 275.

arisen, and abatements had been granted; and in the following year, a temporary arrangement was entered into, by which the ministers assigned to the Council of Edinburgh, their right to uplift the Annuity, and accepted of fixed stipends of 2500 merks yearly, payable by the Town Council.”*

Notwithstanding the increase of one-fifth in the amount of the Tax, “it is a fact, on which both parties are agreed, that the 19,000 merks which were calculated upon, were not produced, even by the assessment of six *per cent.* The consequence of this necessarily was, that the proposed fund was inadequate to the payment of the stipends of the six ministers;—that the design of having twelve Clergymen in the city, was not carried into effect;—and that the salaries of the ten who were established, *were never regularly and fully paid*, notwithstanding all the funds that were allotted for that purpose. The parties, however, seem to have fought on the best way that they could till the year 1655, when an agreement was made between the Ministers and the Town Council.”†

CONTRACT BETWEEN THE MAGISTRATES AND MINISTERS.

At a meeting of the Council, “together with the neighbours,” held 28th September, 1652, after “taking into their serious consideration the hard condition of the several ministers through the not-payment of their stipends in these hard times, have of *their free and voluntary accord*, condescended unanimously; and hereby ordains, that all such neighbours as have advanced [paid] the Annuity of this instant year of God, 1652, *as it was real charity*, and so that it shall be accounted mere gratuity, and that they shall nevertheless be obliged to advance [pay] the Annuity of this instant year of God, [over and above the gratuity of one year’s Annuity] for the better enabling of the Council *to content the ministers so as far as in them lies.*” At the sametime “The hail neighbours unanimously desired the Lord Provost should acquaint the ministers with these propositions following, and to report their punctual answers thereanent upon

* Report of Burgh Commission, page 294. This branch of the Report is understood to have been drawn up by one of the Commissioners, who, from being intimately acquainted with the history of the period referred to, was peculiarly well qualified for the task. Accordingly, there are few, if any errors, in this part of the Report; while in the account of the more recent affairs of the city, the errors are both numerous and important.

† Memorial for the Ministers in their process with the Magistrates, page 15.

next to come. *First*, Whereas the neighbours thinks that the *old* stipend [before the late increase took place] of 2200 merks, or £122, 4s, 5 $\frac{1}{4}$ yearly, *is a competent stipend*, that they [the ministers] will declare whether they will be content therewith or not? *Second*, That whereas *these four years by-past, they have not had the use of the sacrament of the Lord's Supper*,* that therefore the ministers will condescend on the time when those who thirst after it, and against whom there is no just exception, may have the benefit thereof."†

At another meeting, held on the 19th October, 1652, the Council, "and a great many others of the neighbours having convened within the Council-house of this burgh, the Provost, in name of the Council, reported to the neighbours, that according to their desire, on the 28th instant last, the Council had spoken with the ministers *anent the modification of their stipends and celebration of the sacrament*, and that the ministers were content of the proffer of the 2200 merks a-year for byganes, and in time to come, so long as the town were in this hard condition, and that they would grant a discharge of the hail new [increased] stipend, upon the payment of the old [original stipend] till it should please God to enable the town to do better,‡ and declare that they were carefully going about *the way and means for celebration of the communion with all conveniency*."§

* This mode of insisting on a redress of grievances before agreeing to a pecuniary grant, appears to have been copied from the practice of the *liberals* in the Parliaments of Charles the First.

† Records of the Town Council, vol. 17, page 345.

‡ Following in the footsteps of his predecessor of 1652, the present Lord Provost, in 1835, called a meeting of "the neighbours," in St. Andrew's Church, in order to learn what they thought should be done respecting the stipends of the Ministers. "The neighbours" attended the meeting along with a majority of the Council, and unanimously resolved *not*, like their predecessors of 1652, to offer the Ministers the *old small* stipends, but to offer them £500 a year, being more than double the stipend which several of them agreed to accept when they became Ministers of Edinburgh. This liberal offer was refused by the Ministers, who declined to accept of less than £600 as fixed stipends, and the return which the Lord Provost, Council and "neighbours," met with for their trouble, was an application to the Court of Session by the Kirk-Session of St. Andrew's Church, for an interdict prohibiting such meetings in future. They pleaded that meetings for such secular purposes, were not fit to be held in their Church! "Tell it not in Gath, nor publish it Askelon!" The Kirk-session succeeded in inflicting a fine of £180 on "the neighbours," in the shape of law expenses, for holding a meeting in a Church erected with their own money! and the Town Council being unable to procure funds from the trustees for the City creditors with which to defend the action, their opponents obtained an interdict prohibiting all such meetings in future. The circumstances which gave rise to the meetings at both periods were precisely similar, how different the result!

§ Records of the Town Council, vol. 17, page 355.

"There is evidence that the whole produce [of the Annuity] was at first considerably beneath 10,000 merks (£555, 11s. 1d.) yearly." "In this unpromising state of the fund, only ten of the twelve ministers intended were appointed, and the professor of divinity acted as an eleventh, leaving the 12th charge vacant. Still, however, that proportion of their incomes, which depended on the Annuity from the house maills, could not be made up by the assessment; and, therefore, all these Clergymen, in conjunction with the elders and deacons of their kirk-sessions, (and at the time there was no jurisdiction of a presbytery in their bounds,) entered into a temporary contract and agreement with the city, under the authority of an Act of Council, in the year 1655, bearing that the whole incomes they had really drawn had been but 2200 merks (£122, 4s. 5d.) yearly, and stipulating that they should, in future, be made up to 2500 merks (£138, 17s. 9d.) each, and that these sums should be payable by the Magistrates and Council from the whole revenues of the city. In consideration of which, (says this deed) the said ten ministers, with the consent of the said elders and deacons of the kirk-session, and professors of divinity,"* agreed to transfer all claims which they had on the Annuity, and other revenues to the Town Council, the contract to terminate when required by either party. It appears from a memorial, drawn up by the Ministers, which is embodied in this contract, that although there was a "*short incoming* of the rents and *annuities* appointed for payment of the ministers' stipends," they did not, like their successors of 1836, think that the best remedy for the evil was, to make a bargain with a law agent, unknown to the Town Council, by which he was to receive a *tythe* of all he recovered as a recompense for his diligence, in making good "the short incoming of the Annuity."† On the contrary, the Clergy of 1655, keeping in mind that "the neighbours think that the *old* [small] stipend

* Pleadings by the Magistrates in process with the Ministers, page 21.

† In 1836, the Ministers entered into an arrangement with their agent, without consulting the Town Council, by which he was to receive 15 per cent. on all the oldest class of arrears, and 10 per cent on all the more recent arrears which he was able to recover. They had an unquestionable right to enter into this or any other arrangement, being absolute proprietors of the Tax, and every thing connected with it, except the appointment of the collector, being under their control. The circumstance is noticed merely to show the absurdity of the allegation, that the Ministers have nothing to do with the collection of the Tax, and that the whole responsibility rests with the Council. The Ministers, by entering into this arrangement, have shown that they know their rights,

is a competent stipend," agreed to accept of the same, declaring that although "the said ministers, *out of their tender respects to this good town*, and in regard of the bygain predecessors thereof, had for full four years, then past at Whitsunday, abaitted, every ane of them 900 merks (£49, 19s. 9d.) yeirlie of what was due, and whereof they were in use of payment *before and till Whitsunday, 1650,*"—that "considering the condition of this good town and great losses thereof, and the short incomings of the rents and annuities," they were willing to accept, "ilk ane of them, the soume of 2200 merks (£122, 4s. 5d.) yearly, from Whitsunday, 1650, to Whitsunday, 1654, in full satisfaction of all furder stipend, hous mail, or any thing else due to them;" and of 2500 merks, or £138, 17s. 9 $\frac{1}{4}$ d., for all future years, untill either party wished the contract to terminate.* They offered to "give an assignation to the good town of all *bygane annuities* [arrears] of house mails within this burgh, *dew to the ministers*, and uplifted preceding the said term of Whitsunday, 1654." Accordingly, in the assignation they convey their right to the outstanding arrears of Annuitie "*then resting and unwuplifted* from the tenants of the houses in Edinburgh or others indebted in payment thereof, *for any year, or terms preceding the said term of Whitsunday, 1654.*"† In estimating the extent of the sacrifice made, it must be kept in mind that by the existing Act of Parliament, 19,000 merks were to be divided amongst six ministers; and as by this contract, they agreed to accept of 15,000 merks for the same number, they relinquished nearly one-fourth part of the sum which the Act declared to be a suitable amount of stipend.

FOURTH ACT IMPOSING THE ANNUITY TAX.

It will be remembered that the acts of 1649, were passed by the "Committee of Estates" and Parliament, a few months after

and they have thus *practically* given the most unqualified contradiction to the absurd allegation alluded to. If the allegation had been correct, this interference on the part of Ministers would unquestionably have been illegal.

* It is a remarkable fact, and one highly to the credit of the Clergy, that rather than adopt any measures for securing the property of those revenues which had been appropriated for their use, and thus become *tax collectors*, they allowed this contract to subsist for *one hundred and twentyseven years*, being satisfied, during the whole of that period, with stipends never exceeding, and frequently considerably less than £138, 17s. 9 $\frac{1}{4}$ d.

† Appendix to pleadings for the Magistrates in process with the Ministers, page 12.

Charles I. was beheaded, and that it was in the year after the passing of these acts, that the Scotch Army was defeated by Oliver Cromwell, near Dunbar, which had the effect of making his influence predominant in Scotland during his lifetime. In consequence of these acts having been passed during the *Inter-regnum*, they were repealed immediately after the restoration of Charles II., by the general recissory act of February, 1661, along with all the acts passed since 1639, when modified Episcopacy was abolished, and Presbytery established in its stead.

"By this statute, the foundations of the Presbyterian polity were completely destroyed; it ceased to be the law of the land, and the religion sanctioned by the last *recognised* Parliament, was held to be still in existence; or, in other words, Episcopacy now claimed the support of the legislature and of the king."*

The Annuity Tax being considered indispensable for the support of the Episcopal Church, which was thus in effect already established, on the 6th June, 1661,† an act was passed reimposing the Tax, which is still the governing statute under which it is levied. This act differs in some respects from those of 1649, which had been repealed. Like the former acts, it authorised the ANNUITY to be levied over *the existing boundaries* of the city, including the houses of the members of the College of Justice, at the rate of six *per cent.*; but it limited the application of the sum so levied to the payment of the stipends of *six* ministers. It *did not*, however, restrict the sum to be raised to 19,000 merks, and consequently did not restrict the stipends of each of the *six* ministers to the sixth-part of that sum, or to £175, 18s. 6d. *sterling*, as had been done in the former acts, probably because the parties interested, judging from past experience, believed that since six per cent. on the rental of the city had never amounted to nearly so large a sum, it never would, at any future period, *exceed* 19,000 merks, and therefore that the former restriction was unnecessary. And it has been already shown, that by the existing contract entered into only six years before the passing of this Act, the six ministers had agreed to accept of 15,000 merks, in full of their claims against the Annuity and other Ecclesiastical revenues of the city. The Act of 1661, did not, like the former acts, declare that "the Deacons of the Kirk"

* Dr. Cook's History of the Church of Scotland, vol. 3, page 235.

† This was ten days after the execution of the Marquis of Argyll, and five days after the execution of James Guthrie, one of the most popular Presbyterian Ministers.

were the only persons authorized to collect the tax. It allowed "the Magistrates and Council of the said burgh" either to employ the Deacons of the Kirk, or to appoint other collectors "in *their option* as they shall think fit and expedient *for the tyme*," and it empowered, not "the Magistrates and Council," as has been erroneously asserted, but "*the Magistrates of the said burgh*," in their judicial character, to see the act duly executed within their jurisdiction, in the same manner as they were empowered, in other local acts passed at the same period, to see them duly executed, of which another act passed *on the same day*, affords an example.* This Act is tinctured with Voluntary principles, although not so strongly as the earlier Acts. The difference probably arose from the fact, that the Presbyterians, who were *Dissenters* from the Episcopal Church, which was at this time substantially established by the general recissory act,† formed a much larger proportion of the inhabitants than the Presbyterian Dissenters of 1684, or the Episcopalian Dissenters of 1649, when the former acts were passed.

The following extracts contain the whole of the important parts of the Act:—

"And the said totin haveing been *at vast charges for building of Churches* and publick works upon that and other occasions, The comon good and patrimonie thereof is exhausted and overburthened, and upon the considerations forsaid, *the inhabitants of the said burgh*, WHO HES THE COMFORT AND BENEFITE OF THE PREACHING OF THE GOSPELL AND MINISTERIE WITHIN THE SAME, be the space of diverse yeers vntill this tyme has been in vse to pay for the provision and stipend of *ser*

* This Act "gave, granted, and disposed to the *Provost, Bailies, Council, and Community*, of the said burgh of Edinburgh," certain duties on wine, "with expresse power and warrant to the *MAGISTRATES OF THE SAID BURGH OF EDINBURGH*, present and to come, be their owne authoritie, to put the said gift and grant to due execution, within their owne liberties and jurisdiction." "The Magistrates of the said Burgh" are required to put the Annuity Act in force, just as they are required to put all other local Acts in force; and just as the Sheriff of the County, in his judicial capacity, would have been required to put it in force by granting the necessary warrants, on proper cause being shown, if the Tax had been leviable over the County of Edinburgh. But the Town Council, as such, are neither required nor authorised to levy this Tax. When they appoint a collector they fulfill all the duties imposed on them by the Act.

† Archbishop Sharpe was appointed and consecrated along with Fairfoul and Hamilton, in December 1661; but it was not until May 1662, that the Act of Parliament, establishing government by Bishops, was passed.

of the ministers of the said burgh a yearly imposition and annuities, at the rate and proportion of sex merks for and effier-and to each hundreth m^{ks} of the mail and rents of all the dwelling-houses, chalmers, booths, cellars, and all other houses, heigh and laigh, inhabited within the said town, and his Maiestie and Estates of Parliament considering that *there is not a more easie and effectuell way* for provyding and paying the stipends of the said *sex ministers* than in manner, and be the imposition foresaid, and that it is just and necessar that the same should be authorised and satled *be one perpetuall law* in all tyme comeing. Tharefor his Maistie, with consent of his saids Estates of Parliament, doe statute and ordaine that the yearly stipends of *sex of the ministers* of the said burgh shall be imposed upon and paid be the inhabitants, *tennants and occupyers* of the several dwelling-houses, chambers, buiths, cellars, and all other houses, heigh and laigh, within the said town, *without exemption or exception*, of any house of whatsoever holding or nature the same be of, *or of any persone or persons of whatsoever degree or qualety*, or place, upon *pretence of any priviledge or pretext whatsoever*."

"And that the same shall be collected be the Deacons of the Kirk, or a collector to be appointed for that purpose be the Magistrates and Councill of the said burgh, *in their option*, and as they shall think fit and expedient for the tyme. It is always declared that the said imposition being only paialbe be the *inhabitants and occupyers* of the said tenements, chambers, booths, cellars, and other houses *shall not affect the ground*; and that the heritors and others, having right to the said houses, shall not be lyable to the same, *unless they actually inhabite, occupy, and dwell in the same themselves*." The following clause is very curious, inasmuch as it contains an apology for assessing the Members of the College of Justice, declaring that the purpose for which the Annuity was exigible, was "so pious and necessarie," that their being obliged to pay it, was not to be considered as an infringement of their rights and privileges.

"And, becaus it is not intendit that the Colledge of Justice should suffer any prejudice in their liberties, or that any member thair of should be unequallie burthened: It is declared that *the payment of the said Anuities* and imposition for the saids ministers' stipends, being *a cause so pious and necessarie*, shall not preiudge nor be derogatorie to the liberties and priviledges of the Colledge of Justice. And, it is farther ordained, that the said

Annuities and imposition shall be layed upon all *the inhabitants, tenants, and occupiers* of the saids houses within the said burgh after exact survey be four sworne men in every parochie, who shall survey and value the house mailis aforesaid, whair of two shall be citizens, *to be choisen and sworn be the Toun Council*, and other two shall be nominat choisen and sworne be the Colledge of Justice, or such as they shall appoint."

As the recissory Act declared the Annuity Acts of 1649 to be illegal, and consequently inoperative, it had the effect of relieving all those in arrear of Annuity from payment of their arrears. The following clause was therefore inserted in the present act, ratifying and approving "the use of payment of the said Annuities," and empowering the collectors to enforce payment of all arrears resting since the tax was in use to be paid:—"And his Majesty, with consent forsaid, ratifies and approves the possession and use of payment of the said Annuities and imposition, *since the same has been in use to be payed*; and ordains all persons who are resting and have not made payment of their quota and proportion of the said Annuities, or any parte thair of, since the same was in use to be payed, to mak payment of the same, *of all years and termes bygone*, since the time foresaid, requiring and commanding the *Deacons of the Kirks' AND collectors*, ane or mae, to be appointed by the *Magistrates and Councill* of the said burgh, to collect, gather, and uplift the forsaid Annuities, yet resting of all years and termes bygone *and in tyme coming*; and that THE MAGISTRATES OF THE SAID BURGH, sie this whole act and ordinance obeyed and put to dew execution, according to the tenor thair of, and to doe all things necessary for that effect. And letters of horneing, and all other executionalls necessary, are ordained to be direct upon this act, in forme as effiers."^a

It is obvious that the only matter that could ever become a legal question, under the provisions of this act, was the amount of the stipends which each of the six ministers were entitled to receive, in the event of the proceeds of the Annuity exceeding 19,000 merks. Whenever the produce amounted to more than a sufficient sum for the stipends of *six ministers*, the authorities were bound to reduce the rate of assessment in a corresponding ratio; and if any dispute should arise about what was considered a proper amount, it would be decided by the Court on the

^a Thomson's Acts of the Parliament of Scotland, vol. 7, page 344.

same principles on which the stipend of a parish minister is awarded, when the teinds of the parish amount to a larger sum than is necessary for the payment of his stipend. This doctrine is distinctly laid down by the Lord President, in the manuscript notes of his speech, furnished by himself, in the process between the ministers and the Town Council respecting the property of the Annuity Tax, after the passing of the act of 1809, making it applicable to the stipends of *all* the ministers of the city. He says, "the ministers were not to be *titulars* to have a right to the *ipsa corpa*, to the whole profit of the funds, but were mere *stipendiaries*, and only entitled to draw their livings out of it, just as the Clergymen of country parishes draw their's out of the teinds; and at all events, only six ministers were to be provided out of this Tax." He held it to be clear, that the ministers were "only stipendiaries on all those funds, and that the Town Council alone, can modify or augment their stipends." He would "*not* say that the Court cannot control, if a gross abuse be pointed out, but there is none such; the augmentation has hitherto kept pace with other stipends."*

The same doctrine was laid down by Lord Balmuto, who, on the same occasion, observed, "I cannot think that this is an exclusive fund to which the Clergy have a right, independent of any burden upon it. In the same way, in the case of tithes, they belong to the Clergy; *but was it ever heard of, that if there were £1000 of free tithes in a parish, the Clergy should take it all?* They are to be maintained in a respectable manner; and that is all they can ask." Although, *in this action*, the Court, by a majority of one refused to apply the principles laid down by the Lord President and Lord Balmuto, it was not because any of their Lordships denied the accuracy of these principles as of general application, but because some of their number, as appears from their speeches, conceived that "the smuggled clause" which the ministers got introduced into the act of 1809, (which will afterwards be more particularly referred to,) completely destroyed the limitations and restrictions of the act of 1661. But in an action of the same kind tried before the Second Division of the Court of Session in March, 1829, which the minister of Montrose brought against the Magistrates, in order to establish his right to the property of the Annuity Tax levied in that burgh, there being no supplementary act with a "smuggled clause," altering the provisions of the original act, the Court *unanimously* found that the minister was only entitled to a reasonable stipend out of the Tax,

* Volume containing process with the Ministers, page 167.

which they fixed at £340. They likewise found that the Magistrates were entitled to make a reduction in the rate of the Annuity, originally authorised to be imposed, so that no more should be collected than was sufficient to pay the stipend and the expences of collection; thus giving complete effect to the principles laid down by the Lord President and Lord Balmuto, in 1813. As the Montrose case is quite conclusive of this question, on which so much controversy has arisen, a short account of it may, with propriety, be introduced here, in order to fix, by the decision of the Supreme Court, the precise legal meaning of the Edinburgh Act of 1661, apart from the question of its meaning in connection with the Act of 1809.

The case is reported, by *Shaw and Dunlop*, vol. 7, p. 573. It appears that the Montrose Annuity Act was passed 18th July, 1690, only 29 years after the Edinburgh Act, and that it is of the same import, except that in Montrose, only 5 per cent. is authorised to be levied, and for the support of *one* minister. The act narrates that the teinds are only sufficient for one minister's stipend, "and the place being so populous, that one minister is not able to undergoe the charge," the "*Towne Counsell and hail inhabitants of the burgh*," are desirous of having an additional minister, and are willing to pay his stipend by "*ane Annuity*" of five per cent. on the free rental of the burgh. It is therefore enacted, "*that the foresaid fond of fyve per cent. of free rent of all houses in Montrose, and that the tennents, inhabitants, and possessors thereof, may be ordained to pay the same to the Magistrates and Towne Counsell of Montrose, yearly, and that for the end foresaid, and to authorize the said Magistrates and Towne Counsell to call their second minister.*"*

It appears from the report of the case that the ministers for the time being, like the ministers of Edinburgh, had always received fixed stipends from the Town Council; which, however, until 1814, generally equalled and frequently exceeded the produce of the 5 per cent. Annuity which the Town Council collected, and that augmentations were made from time to time as the produce of the Tax increased. Thus in 1802, the stipend was fixed at £130; in 1803, at £150; in 1807, at £220; in 1810, at £250; and in 1814, at £275. During all this period, the full amount of 5 per cent. was levied, but the produce being more than sufficient to pay the stipend, the Town Council, as became honest administrators for the public, reduced the rate, first from 1s. to 10d.

* Thomson's Acts of the Parliament of Scotland, vol. ix. page 188.

in the pound of rent ; and this being found to produce more than was sufficient, they afterwards reduced the rate to 9d. in the pound on the rents of *houses*, and levied *nothing from shops*. Even with this reduction, in 1826, the produce amounted to £345, when the minister applied for an augmentation to £340, which he offered to accept as a fixed stipend during his incumbency. The Magistrates offered £315, which he refused, and founding on the decision of the Court with respect to the ministers of Edinburgh in 1813, but probably not knowing that it rested on "the smuggled clause," he brought an action "to have it found that he was entitled to *the whole produce* of the Annuity, *at the rate of five per cent.* on the rents of all houses within burgh, *including shops* as well as dwelling-houses." He pleaded the decision in the case of Edinburgh, as conclusive in his favour; but the want of "the smuggled clause" was fatal to his plea. Lords Glenlee, Pitmilley, Alloway, and the Lord Justice Clerk, unanimously concurred in the following finding:—
 "Find that the defenders, the Magistrates of Montrose, are *not bound to levy the whole sum permitted to be assessed by the Act of Parliament referred to*, nor to a greater extent than is necessary for the purpose of providing *a reasonable stipend* to the pursuer and his successors in the office of second minister of Montrose, and for defraying the expenses of collection, and other expenses incident to the management of the fund;—that, *except for these purposes*, the Magistrates are *not entitled to levy any sum by assessment under the said act*;—that shops and other tenements, as well as dwelling-houses, are liable to assessment;—find, of consent, that, in the present circumstances of the parish, the sum of £340 sterling, is a competent and reasonable stipend for the pursuer and his successors in the office of second minister of Montrose, and modify the same accordingly."

We have been thus particular in proving, from unquestionable authority, the precise legal import of the act of 1661, considered by itself, in order that the effect of "the smuggled clause" might afterwards be more distinctly seen, and because it has frequently been said by parties who condemned the conduct of the ministers with respect to that clause, that the sum authorised to be levied under the act, was restricted to 19,000 merks.

EXEMPTION OF THE COLLEGE OF JUSTICE.

Notwithstanding the peremptory declaration in the act, that the Members of the College of Justice were to pay the Annuity

Tax, in twenty six years after the passing of the act, the Judges of the Court of Session gave a decision *in their own favour*, exempting themselves and all their brethren of the law bodies; thus overturning the express provisions of the Act of Parliament, in order to extend their own privileges. "It is stated by Fountainhall that the exemption of the College of Justice had not been pleaded against the levying of the Annuity Tax till a short time before 1678. In 1687, the Court of Session declared 'the Members of the College of Justice exempt from payment of the minister's stipends, as also from watching, warding, and all impositions for the same;' and in 1788, the Members of the College of Justice were found exempted from the payment of poor's money, and other taxations imposed by the magistrates."*

The following table shows the extent of the pecuniary advantages which the members of the College of Justice have derived from this decision in their favour, and consequently the extent to which the other inhabitants have been unjustly burdened in consequence of their exclusive privileges. The burdens from which they are thus relieved, are 6 per cent. Annuity; 6 per cent. poor's-money; and 1 per cent. impost; in all, 13 per cent. on the amount of the rental of the property occupied by them.

	Number of houses exempted.	Rental of houses occupied by College of Justice.	Proportion which the Rental of the College of Justice bears to every £100 of the rental of the city.	Amount saved annually by the Col. of Justice by their exemptions.
		£ s. d.	£ s. d.	£
1831	657	45,240 8 4	19 4 3	5981
1834	550	37,706 13 4	17 10 1	4901
1835	582	34,355 16 8	16 15 9	4466

RESISTANCE TO THE ANNUITY TAX.

It has been asserted, with great confidence, that the resistance to the payment of the Annuity Tax is of recent origin, and that it has arisen solely from the agitation of the Voluntary question. There never was a more unfounded statement hazarded on any subject. The resistance began with the imposition of the Tax, and continued under all the changes took which place in the form of Church Government.

* Report of Burgh Commission, page 295.

RESISTANCE DURING THE ESTABLISHMENT OF MODIFIED
EPISCOPACY, from 1634 to 1639, WHEN IT WAS ABOLISHED.

It appears by a Minute of the Town Council, of date 25th May, 1635, that Edward Littell was appointed Collector of the Annuity, with a salary of £27, 15s. 5d., being rather more than 4 per cent. on the sum authorised to be levied. Resistance to the collection of the Tax, appears to have been anticipated, if it had not actually commenced at this early period, for Littell and his two sureties are taken bound to account for the "particular sums contained in the said rolls, either by *payment of the sums* contained in the said rolls, or by production of *poynding of the goods of the disobedients, or wairding [imprisoning] of their persons.*"*

RESISTANCE DURING THE PRESBYTERIAN ESTABLISHMENT,
FROM 1639 to 1661, WHEN IT WAS ABOLISHED.

When Presbytery flourished in all its glory, as the Established Church under the Protectorate of Cromwell, the resistance to the payment of the Annuity Tax on the part of those who did not belong to the dominant sect, for whose Ministers it was collected, was very great. We have the authority of the Kirk-sessions, as quoted by the Burgh Commission, for saying that, at this time, "very many" refused to pay the tax, "EXCEPT THEY WERE COMPELLED BY THE AUTHORITY OF THE MAGISTRATES,"† and the following extracts from the Records of the Town Council, furnish ample evidence that the resistance continued during the whole period of the existence of the Presbyterian Established Church.

It appears from the following Minute of Council, of 1st December, 1652, that in consequence of the Annuity Tax being so difficult to collect, the Treasurer of the Kirk Sessions was directed to take out letters of horning against "the Deacons of the Kirk," in order to quicken their diligence, and also against the inhabitants who refuse to pay.—"Ordains Thos. Fairholm, Treasurer of the Kirk Sessions of this burgh, to raise new letters of horning *against the Deacons of the Kirk Sessions* and siclike [also] to raise new letters at the instance of the Deacons,

* The power of imprisonment does not appear to have been employed until after the Ministers had established their right to the whole produce of the Tax. The first cases occurred in 1630 and 1636.

† See quotation, page 18.

against the inhabitants of this burgh, and to put the same into execution, if need be, for payment of the Annuities to the effect,—the ministers shall be paid of their stipends, whereanent these presents shall be their warrand.”*

16th March, 1653.—Appoints a committee “to meet with those who were elders† of the Kirk-sessions, anno 1649 and 1650, and to find out a way to get in the bygone Annuities of those twa years, for the better payment of the Ministers’ stipends, whereanent these presents shall be their warrand.” ‡

The difficulties attending the collection having continued to increase, on the 11th April, 1655, the Town Council “appointed John Straiton collector of the Annuity,” and as a stimulus to him to exert himself in recovering the outstanding arrears, which amounted to a considerable sum, they agreed to “allow to him ten of ilk hundred, [10 per cent.,] that he sall collect of the bygane restis [arrears] due resting, and unpayit at Martinmas last, and six of ilk hundredth§ [6 per cent.] that he sall collect of the succeeding years and terms during his service.”||

26th October, 1655.—Forsameikle as *all fair and calm means* has been used hitherto for payment of the bygone and present ANNUITIES due by the neighbours, and *nothing has succeeded answerable to expectation* and commands, so that the Ministers are unjustly disappointed of their bygone stipends, *through the unwillingness* of the neighbours, and seeing necessity requires obedience, for the exoneration of the Council, and the Ministers’ better payment, the Council ordains John Straiton, their collector, to give lawful intimation to the neighbours, by three severall warnings, especially to such as are not as yet so lawfully warned, to pay their Anuitie; and in case of their failure or refusal, after such lawful warning, to use *the last remedy, in quartering of soldiers upon them*, aye and untill all bygone and present Anuities be payed, whereanent these presents shall be their warrand.”¶ There is nothing on the record showing that this act was ever carried into effect.

In 1658, it was found so difficult to raise a sufficient sum for

* Records of the Town Council, vol. 17, page 357.

† It will be remembered that at this period, the sessions were appointed by annual elections.

‡ Records of the Town Council, vol. 18, page 8.

§ This is considerably more than the per centage which the salary of the present collector amounts to, on the sum collected by him.

|| Records of the Town Council, vol. 18, page 170.

¶ Records of the Town Council, vol. 18, page 223.

the stipends of the ministers, which were greatly in arrear, that several members of the Town Council, on the 24th February, agreed to advance money out of their own pockets, to pay the stipends then resting; taking their chance of afterwards receiving payment from the city. This act of Voluntary liberality met with the approbation of the Council, and the records show the names of the different lenders, with the sums which each of them advanced, and the ministers to whom each of the sums was paid.*

13th Jan. 1660.—“Ordains the officers of the burgh, ordinary and extraordinary, to give assistance to Andrew Mitchell, or to any other the collector of the Annuities shall think fit to appoint for poynding of such who are yet deficient for paying their bygone or present years Annuities; and also to *arrest in the tenants hands, the rent of SUCH HERITORS WHO ARE HITHERTO OBSTINATE AND WILL NOT PAY* till the same [arrears] be satisfied, whereanent these presents shall be their warrant.”† This quotation throws considerable light on the status of the parties who at this time resisted the tax, and it is also of importance in several other respects. 1. It proves that some of the defaulters were persons of considerable substance—heritors of the burgh—owners of other properties than those in which they resided and for which they were assessed. The Annuity Tax was never payable by the heritors *as such* but by the *occupiers*. Hence the heritors referred to must have refused to pay the Annuity Tax exigible on those houses which they inhabited, and therefore, in order to secure payment, the Council directed the collector to arrest the rents of *other properties* belonging to them in the hands of the tenants to whom they were let. 2. It proves that at this period *arrestment* was employed as an easy and effectual mode of recovering payment from those who refused to pay the tax. 3. It proves that the persons referred to, did not object to pay the tax on the plea of poverty, or from any temporary deficiency of funds; their resistance was of the most determined kind. The description of “*heritors who are hitherto obstinate and will not pay*,” could only apply to persons who objected to the *principle* of the tax, and who resisted it, conceiving it to be “persecution for conscience sake.”

* Records of the Town Council, vol. 19, page 281.

† Records of the Town Council, vol. 20, page 101.

RESISTANCE DURING THE EPISCOPALIAN ESTABLISHMENT,
FROM 1661 to 1688, WHEN IT WAS ABOLISHED.

After the restoration of Charles II., Episcopacy became "the Church by law established," and from that period, to the Revolution of 1688, the resistance to the payment of the tax on the part of the members of *the present Established Church*, who were then *Dissenters*, was greater than at any period, either before or since that time, not even excepting the last ten years. Like the Dissenters of the present day, they supported their own Ministers at their own expence, on the *Voluntary principle*, and they naturally objected to being compelled to pay for the support of the Ministers of a Church to which they did not belong, and which they believed to be an anti-Christian Establishment. They did not, like the Dissenters of the present day, object to *all* Civil Establishments of religion, but in common with them, they considered it "persecution for conscience sake," to be compelled to support any sect but their own. The pointing and rousing of their goods for payment of stipend was carried on to a great extent, but this did not produce the desired effect. They suffered "the spoiling of their goods" without being intimidated into compliance with demands which they believed to be essentially unjust. In this state of matters, the Town Council, adopting the *fashionable* expedient of the day, ordered soldiers to be quartered on all those who refused to pay the tax. This most iniquitous resolution was instantly carried into effect, but the "still small voice" of conscience was not to be subdued. Proceeding from one degree of wickedness to another, the Town Council ordered the soldiers to be *paid* by the parties on whom they were quartered, and their goods to be roused to provide the necessary funds; but notwithstanding all their ingenuity and all their iniquitous contrivances for enforcing payment of this hated tax, there was one discovery which they did not make, but which the superior light and civilization of the nineteenth century has enabled "the friends of the Church" to make,—that the imprisonment of the persons of those who resist the Tax, is the most effectual method of enforcing payment.

To the members of that Church, which is *at present*, "by law Established," the inhabitants of this City are deeply indebted for the first determined and continued resistance to the payment of the *Annuity Tax*, and for the vindication of the rights of con-

science under the severest trials, and amidst the greatest dangers. By their resistance they had reason to believe they would incur the displeasure of the most arbitrary government which had ever existed in Scotland—of such men as Middleton, Lauderdale, Sharpe, Rothes, Dalzell, Perth, and the Duke of York—under whose direction every species of cruelty and oppression was perpetrated. In other cases of resistance for conscience' sake, they were in the practice of employing torture as freely as ever the agents of the Inquisition did; and not satisfied with the instruments employed by them, by a refinement in cruelty, they invented new instruments of torture, of a more dreadful kind. These they frequently ordered to be applied in their presence, before the Privy Council, in torturing those who were prisoners “for conscience' sake.” They fined, and imprisoned, and banished, without law, and without mercy. They caused hundreds to be put to death by military execution, without even the forms of justice; and others, after a mock trial, were ordered to be executed with every refinement in cruelty which the most fiendish ingenuity could suggest. They spared neither age nor sex. The barbarities which they committed cannot be read without exciting the most intense feeling of horror. Yet all these enormities were perpetrated in the name of religion, for the professed object of supporting the Established Church, and, consequently, for promoting the glory of God, and spreading the knowledge of the Gospel of Jesus Christ! To such lengths did these supporters of Church Establishments carry their love of compulsory principles!

Notwithstanding the dangers to which they were subjected from the character and conduct of their rulers, the Presbyterian *Dissenters* resisted the Tax in the most determined manner. Each of these *practical Voluntaries* declared with respect to the Episcopalian ministers—“I think my religion better than theirs; and, therefore, I never will pay them one shilling—no, not one farthing. They may seize my cattle, my corn, my furniture—they may distrain my tenants—they may sell, carry away, or destroy—I never will pay one penny; it is an unjust demand—I will not pay. I will not resist the law, because, like so many other monstrous iniquities, there is law for this also; but I repeat I never will pay them one shilling—to them, or to their use, not one farthing. Come what may, I never will pay them one single farthing.”* These conscientious

* Letter from Daniel O'Connell, Esq., M.P., to the People of Britain, 25th June, 1836.

and consistent apostles of the doctrine of passive resistance, were not to be deterred from performing what they believed to be their duty by the fear of personal danger, much less by the clamour that the Ministers of the Established Church were not adequately supported, and that they had an indisputable right, by the existing law of the land, to the proceeds of the Annuity Tax. Believing that a tax for the support of a Church to which they did not belong was unjust in principle, they acted in the way which their own consciences approved, resisting all attempts to compel them to do what *they* considered *evil*, in order that what *others* considered *good* might come, and disregarding the consequences which might follow from their resistance.

The Ministers were reduced to the greatest distress. Their stipends were small in amount, and very irregularly paid. On the 28th Nov. 1661, the Town Council resolved to apply to the inhabitants to know what they would *lend* for Ministers' stipend. Shortly afterwards, they resolved to consult the city assessors, to know what security they could give the inhabitants for any advances they might be inclined to make for this purpose. On the 6th February, 1663, they resolved that the stipends of six of the Ministers should be £138, and that the stipends of the other six, who were to be allowed for house rents, should be £83. Nearly one-half of the Records of the Town Council, about this period, are filled with matters concerning the Ministers and their stipends, and Churches and Sessions. Judging from the Records, the support of the Church appears to have been a source of constant annoyance, and an intolerable burden on the inhabitants of Edinburgh, for the last two hundred years. The *fruits* which have been produced by these expensive and troublesome Establishments will be afterwards adverted to; in the meantime, it may be proper, shortly, to explain the mode in which the *business* of pawning and rousing, for the support of the Church, was transacted.

It appears that the collector was in the habit of going to the houses of those in arrear, and carrying off to "the Annuity Office," such articles as would sell by public auction, for a sum equal to the amount of the assessment. These articles were called "poynds for Annuity," and were entered in a book, with the names of the parties from whom they were taken, in the same manner as is done by pawnbrokers at the present day. They were redeemable at pleasure on payment of the arrears, until they had accumulated to an inconvenient extent, when the

collector applied to the Council for an order to sell "the poynds for Anuitie," which was granted as a matter of course, but generally with an intimation that public notice was to be given to "the neighbours to redeem their poynds within a fortnight," otherwise they would be sold to the highest bidder for payment of the Ministers' Stipends. The "Anuitie Office" appears to have been a sort of general pawn-broking establishment and "Auction Mart" for the support of whatever Church was established by law for the time being, and consequently was one of the means employed for the promotion of the gospel! How unlike the means employed by the Founder of Christianity and his Apostles!

The following extracts will show the nature and extent of the resistance made to the Annuity Tax by the Presbyterians of the present Established Church, in the palmy days of Episcopacy.

19th Feb. 1662.—"Compeared William Brown, collector of the Annuitie, and gave the overtures underwritten." "In respect, there are many poynds taken that are suffered to lie unrelieved, till the persons employed by those intrusted for collecting the Annuitie are gone [have left the town,] and then the poynds are challenged and called for, and oftentimes *that sought* [claimed] *that was never taken from them*; in respect whereof, the Council would ordain and declare all such poynds so taken, if not relieved by payment of the Annuitie, and satisfaction given to the persons employed thereanent, within days after the poynding thereof, to be forefaulted, and the persons [to be] still liable for the Annuitie."* The Council approved of the same, and enacted accordingly.

21st Jan. 1666. "The Council appoints the hail poynds taken for Annuitie to be disposed of according as the Bailies shall think fitt, provyding the owners doe not redeem them betwixt and this day fortnight."†

The following extract shows that within 15 years after the passing of the act of 1661, the resistance was so great, that the Council adopted the extraordinary expedient of enforcing payment, by quartering soldiers on all those in arrear, until the tax was paid! January 21st, 1676 :—"The Council considering

* Records of the Town Council, vol. 21, page 97. Although Episcopacy was substantially restored at the date of this act of Council, it was not until December, of the same year, that the Presbyterian Ministers of Edinburgh, were formally expelled from their offices. Some of them were afterwards obliged to leave the kingdom.

† Records of the Town Council, vol. 28, page 122.

that there is many poynds lying in the hands of the collector of the Anuitie, which are exceedingly troublesome to him," empowers him "*to sell and dispose of the hail poynds in his custody preceding the date hereof, to the best advantage, for the use of the Ministers' Stipends*, and that withall convenient dilligence, as likewise considering that the taking of poynds makes the inhabitants slack in payment of their Anuitie, and is not such an effectual way for inbringing thereof, as was expected; therefore ordains the said John Kinnear TO QUARTER SOLDIERS UPON THE DEFICIENTS [defaulters] OF THE SAID ANUITIE; and that they remove not from their houses, till they pay the said Anuitie." *

27th March, 1678.—There is a long act of Council of this date, setting forth, generally, that the means hitherto employed for the collection of the Annuity, had not been found effective, and requiring the inhabitants instantly to pay up the arrears due by them; and, as usual, ordering the poynds to be sold. It appears from the concluding part of the minute, that the inhabitants who had soldiers quartered on them as a punishment for refusing to pay the Tax, were obliged to *pay for the soldiers as well as for the Ministers*, and that when their "poynds" were roused, the expenses of the soldiers were to be deducted from the proceeds of the sale, and the surplus to be paid over to the parties from whom the goods were taken. The following part of this Act deserves to be quoted, to show the means employed at this period for the propagation of the gospel: "And what poynds are already in the custody of the said collector or shall be poynded from the said deficientes, betwixt and the 1st of May next, the said day being come and bygane, in case the owners do not relieve the said poynds, the same shall then be appraised [sold] and the collector shall only be accountable for the superplus of the value more nor is DUE TO THE SOLDIERS WHO [were] QUARTERED UPON THE PERSONS POYNDED [for] THE SAME." †

15th October, 1684.—"The Council appoints a proclamation to pass through this city, intimating to the hail inhabitants that are defective in payment of their Annuity, from whom John Kinnear, collector, has poynded severall poynds, that they come to the said collector and relieve their poynds by payment of their bygaine Annuity, betwixt and Martinmas next, certifying these that shall not relieve them, they shall be disposed upon by the

* Records of the Town Council, vol. 28, page 135.

† Records of the Town Council, vol. 29, page 55.

collector, and they shall pay their Annuities notwithstanding thereof.*

26th February, 1686.—“The Council appoints a proclamation to pass by tuck of drum through the citie, intimating to the whole inhabitants from whom the collector of the Annuities has taken poynds, upon the amount of their deficiency in payment of their bygone Annuity, that they repair to the collector's office, within eight days after the said intimation, certifying such as shall fail in relieving of their poynds, within the said space, by payment of their bygone Annuity, the collector is to dispose upon the said poynds by rousing the same.”†

RESISTANCE TO THE ANNUITY TAX AFTER THE ESTABLISHMENT OF PRESBYTERY, AT THE REVOLUTION OF 1688.

No sooner had the Presbyterians become the dominant sect, and their Ministers the persons legally entitled to receive stipends from the produce of the Annuity Tax, than the Episcopalians, whose Ministers did not participate, refused to comply with the demands of the Tax-gatherer.‡ The goods of the defaulters were immediately taken to the Annuity Office as “poynds,” but it was not until 1693, that they had increased to such an inconvenient extent, as to require from the Council a peremptory order for their immediate redemption, or sale by public roup. The resistance continued, and the pointing and rousing for the support of the Church, followed as a matter of course, with great regularity for upwards of half a century. It appears somewhat extraordinary, that when each of the parties who, by turns, ceased to be the dominant, sect objected to pay for

* Records of Town Council, vol. 31, page 85.

† Town Council Records, vol. 31, page 289.

‡ The following quotation from Maitland, shows that the Episcopalians resisted the interference of the Clergy and Elders of the Established Church, in matters of much less importance than the payment of the Annuity Tax. The Elders of the Church were in the practice of taking a census of the population every year, and on these occasions, the Episcopalians refused to give them any information, on the ground that they were not subject to the control and examination of the Ministers of the Church. This fact contrasts in a striking manner, with the modern doctrine advocated by the High Church party, namely, that all the Dissenters are under the pastoral superintendence of the Minister of the parish in which they happen to reside. “But the greatest defect [in the census] is owing to the Episcopalian inhabitants, who, being of a different communion from the Established Church, are not subject to the control and examination of its Ministers; wherefore many of them refuse to give accounts either of the names or numbers of persons in their families.”—*Maitland's History of Edinburgh*, page 218.

the Ministers of the other sect, it did not occur to them that *all* compulsory assessments for the support of Civil Establishments of religion, were unjust in principle, and injurious to the great cause which both were anxious to promote—the diffusion of the gospel.

It may be proper here to notice the amount of the Ministers' Stipends during this period. The Stipends which in 1663 had been fixed at £138 for each of the six senior, and £83 for each of the six junior ministers, were afterwards equalized, and fixed at £111. In 1694, they were all advanced to £138, but from the resistance to the Annuity Tax, the whole ecclesiastical revenues of the city did not produce a sufficient sum for this purpose; and, therefore, on the 12th May, 1708, an act of Council was passed, fixing the stipends of all the Ministers to be afterwards appointed at £111, including the allowance for house-rent. On the 13th August, 1712, the stipends of three of the Ministers who had been appointed since the passing of this act, were advanced to £138, on condition that they were to officiate alternately at a preaching station in the city, where it was proposed to erect a parish Church. Against this increase, the city-treasurer entered a protest on the records, of which Maitland gives the following quaint and graphic account:

“The Common Council having at this time seemingly partially augmented the stipends of three of the town's Ministers, to two thousand five hundred merks each; which Dundass, the town treasurer, regarding as a grievance, and great injury done the citizens, solemnly protested against the said augmentation for the following reasons:”—

I. “That this resolution was contrary to an act of Council, still in force, which expressly forbids augmenting the Ministers' Stipends; and this at a time when the town was in much better circumstances than at present.—II. That when the said three Ministers were chosen, the said act for fixing the Ministers' stipends at 2,000 merks yearly, being notified to them, it was the condition on which they accepted their respective charges.”—III. “The town's debts being greatly increased since the commencement of the said act; instead of adding to the public burden, it was highly necessary to think of all ways and means to reduce the town's expenses,” &c. His remarks are curious, “The reasons in this protest are so laudable, just, and nervous, that they richly deserve, not only a place in the cabinets of all good and virtuous men, but to be stored up in the hearts and minds of all

persons intrusted with the government and direction of public affairs, to remind them of their duty to the people whom they represent. And in like manner it should be a caution to all those who assume the title of God's ministers, to prevent their dishonouring their great and good Master, by iniquitously enriching themselves at the expence of their injured flocks."*

Notwithstanding the protest of Treasurer Dundass, on the 6th August, 1714, another act of Council was passed, by which all the stipends were advanced to £138, at which rate they appear to have remained stationary until 1782. The following extracts show the progress of the resistance to the Annuity during this period.

12th May, 1693.—“ Ordains intimation to be made by tuck of drum to all the inhabitants to relieve their poynds lying in the *Annuity Office*, betwixt and the first day of June next, with certification; if they fail, the same will be *set to sale by one public roup*.”†

It appears from the following act of Council, that persons who were “spoiled of their goods,” for conscience sake, were occasionally relieved from the disagreeable situation in which they found themselves placed:—19th Jan., 1698.—“ The Council, upon supplication given in by Mr. Simon Gyles, *French Minister*, do appoint the treasurer to cause *redeliver his poynds, which was taken from him for his Annuity*, and exeems [relieves] him from any payment of his bygone *Annuities*, and in time coming; and from payment of his proportion of street and poor's money during the Council's pleasure, providing his house-rent does not exceed £11, 2s. 2d. *sterling*.”‡

2d August, 1699, “ The which day the Council appoints the poynds lying in the hands of the collector of the Annuity and seat-rents, poynded for payment of the same,”—“ to be roused within ten days,” and appoints intimation hereof to be published through this city by tuck of drum, that none may pretend ignorance.”§

25th August, 1699, “ The Council recommends to the former

* Maitland's History of Edinburgh, page 141.

† Records of the Town Council, vol. 34, page 176.

‡ Records of the Town Council, vol. 36, page 36.—It will be observed that the relief from the Annuity was altogether independent of the rent of his house, and that the condition about house-rent attached merely to the other taxes.

§ Records of Town Council, vol. 36, p. 346.

committee, annent the Annuity, to dispose of the poynds which were uplifted FROM SEVERAL POOR PEOPLE, conform to a list given in, extending to the sum of £9, 1s. 0^s₁₂, and to do therein as they shall think just.”*

30th April, 1701, “Appoints the Annuity poynds,”—“to be roupd this day eight-days, and intimation to be made to the neighbours this day.”†

10th December, 1701, “Allowed the collector of the Annuity, to cause make intimation to the neighbourhood, to relieve their poynds for Annuity within 14 days after publication, with certification if they fail, their poynds shall be roupd.”‡

7th August, 1706, “Grants warrant to the collector of the Annuity, to roup the poynds in his hands taken from the deficients [defaulters] in payment thereof,”—“unless these poynds be relieved by payment betwixt and this day eight-days.”§

6th August, 1707, “Grant warrant to roup the poynds for Annuity.”||

26th Nov. 1718.—“The Council appointed the following proclamation to be intimated in the usual manner, advertising all the inhabitants of this city, who have poynds in the Annuity Office for their Annuity, &c., due at Whitsunday 1717, that *the said poynds are to be exposed to public roup*, the 5th December, instant, in the said office, if not relieved by payment before that day.”¶

1st Feb. 1738.—“Upon a petition by Mark Sprot, Skinner, in respect of his poverty, did ordain John Fergus, collector of the *Annuity*, to deliver back to the said Mark Sprot the goods poynded from him in payment of *sixteen shillings* sterling, due by him, preceding Whitsunday last, 1737.”**

The following interesting report appears in the proper revenue accounts of the City for 1741. It shows that nearly 100 years ago the Town Council conceived that they had such an undoubted right to levy seat-rents, that they were in the practice of summoning parties, who occupied seats without paying for them, before the Bailie Court, in order to recover payment. “By the Committee’s report, approven of by the Council, the 29th

* Records of Town Council, vol. 36, p. 375.

† Records of Town Council, vol. 36, p. 792.

‡ Records of Town Council, vol. 36, p. 950.

§ Records of Town Council, vol. 38, p. 586.

|| Records of Town Council, vol. 38, p. 804.

¶ Records of the Town Council, vol. 46, page 108.

** Records of the Town Council, vol. 59, page 20.

August, 1740, the desperate arrears were to be discontinued in Mr. Fergus' next account. *Doubtful*, 8 per cent. arrears [the rate allowed for recovery of old arrears] were to be poyned for betwixt and Martinmas, 1740, and the *good* before Whitsunday, 1741; and the arrears of seat-rents, both good and doubtful, without distinction, were to be pursued for presently before the Bailie Court;* and public intimation was to be made of the roup of all poynds in Mr. Fergus' hands, that they might be either returned, if the owners were unable to relieve them, or disposed of as the Magistrates should see cause,—and in time coming no person obtaining an Act of Council for a seat, is to be allowed possession till one year's rent thereof is paid per advance, and intimation is to be made annually from the pulpits of the several churches, that such as are in arrear for more than one year, their seats will be disposed of to others."

19th June, 1745.—"Bailie Mansfield, from the Committee on the poor, reported that they having perused a list of the *poinds for Annuity* and poors' money, in the hands of John Fergus, collector, were of opinion that *these poinds ought to be roup'd*, and sold upon the second Wednesday of July next; and that Mr. Fergus ought previously to advertise the respective persons concerned, so as they may be at liberty to *redeem their poinds by paying their arrears*. A few of the poinds, in the foresaid list, the Committee ordered to be redelivered to the persons concerned, *in respect of their mean circumstances*, as the report under the hands of the Committee bears," which report was approved of. This is the last order for rousing the goods of the inhabitants for Ministers' stipends, which appears in the Records of the Town Council; but the collectors afterwards proceeded to such extremities of their own accord, without considering it necessary to apply to the Council for authority, as appears from the following entry in the proper revenue accounts of the City.

"1749—Cash received for SILVER PLATE, poyned by John Fergus, Collector, [of the Annuity] sold to Messrs. Ker and Dempster, for £22, 14s. 10 $\frac{1}{4}$."

This extract is important in several respects; 1. It proves,

* The Kirk Sessions who have brought an action of declarator to have it found that the Town Council have no legal right to levy seat-rents, will find some difficulty in getting over facts of this kind, showing that the Council were in the practice of enforcing their right to let seats nearly a century ago.

beyond the possibility of cavil or dispute, that the resistance to the Tax was not confined to the poorer classes. 2. It proves that the resistance, like that of the French minister in 1678, was not from inability to pay, but from conscientious objections to the principle of the Tax. Parties who were in circumstances to be possessed of silver plate, would have had so much repugnance to its being known that their plate was carried off, and sold by public roup for payment of any ordinary Tax, that they would have arranged to borrow the necessary sum on the security of their plate, in order to avoid a public exposure of their real poverty amidst their apparent splendour. But their objection to the principle of the Tax, affords a satisfactory explanation of the startling fact, that a quantity of silver plate was sold for payment of Ministers' stipend. 3. It proves that the number of those whose goods were roup'd, bore a considerable proportion to the total number of rate payers, because the sum collected during this year, was only £670, of which £22, 14s. 10½, or one-thirtieth part, was produced from the sale of pointed plate. It is probable that these "poynds" did not all belong to the year on which they were sold, but were the accumulation of the four years which had elapsed since the date of the last *general order of sale*; but on the other hand, it must be remembered that this sum was produced from the sale of only *one description of "poynds,"* and that the produce of all the other articles which were roup'd, would be included in the amount of the collectors accounts for the year in which the sales took place. 4. It proves that at this period, the Collector of Annuity had adopted the practice followed in England at the present time, in enforcing payment of Church-rates from the Members of the Society of Friends; it being usual to carry off silver plate from them in preference to any other article, because it can be more easily converted into money. This may furnish a useful hint to the present collector, whose situation, in consequence of the recent imprisonments, will be no sinecure.

It appears from Maitland, that at this time, the Episcopalians were a numerous body in Edinburgh. In the Tron Church Parish alone, according to him, "in 1745, there were one English Chapel, and six other Episcopal meeting-houses, with an independent meeting-place;"* and in 1753, there were twelve Established Churches in the city and suburbs, and "se-

* Maitland's History of Edinburgh, p. 170.

venteen meeting-houses, viz., twelve Episcopal, an Independent, a Seceder's, a Quaker's, a French, and one Popish.* *

MODE OF COLLECTING THE ANNUITY TAX.

It appears from the records, that from 1634, when the Tax was first imposed, until 1677, the Town Council either employed a person with a fixed salary, as collector of the Annuity and seat-rents, or allowed a per centage on the sum collected. Thinking, no doubt, that by farming out these branches of revenue, like the petty customs of the burgh, they would be able to realize a larger income, than by keeping the collection in their own hands, they, in 1677, agreed to let the Annuity and seat-rents on lease for three years, at the annual rent of 17,000 merks, or £944. Improving on this plan of farming out the seat-rents of the Churches, and the Annuity, for Ministers' stipends, in 1681, they resolved to expose them by public auction, and to knock them down to the highest bidder! It does not appear what was the result of this setting up of the Church to public auction, but in 1685, these branches of revenue were let on lease for £1000, and in 1689, for £1144. In 1693, they were taken into the hands of the Council, and a collector was appointed.

In 1695, the Council resolved to let the Annuity, along with the Ale-duty, by public auction, but for some reason, which does not appear from the Record, this resolution was departed from, and the Tax remained under the charge of a collector. In 1711, the Annuity and seat-rents were again put up to public auction, and knocked down to Andrew Edgar, for £1175, which was considerably more than the average produce when they were under collection.† New leases were granted to the same person from time to time, at a reduced rate, until 1717, when John Fergus was appointed collector, receiving either a salary or percentage on the produce, until his reign terminated, probably by his death, in 1744. He was succeeded by Archibald Wightman, and other collectors, under the same arrangements, until 1834,

* Maitland's History of Edinburgh, page 215.

† Perhaps a hint may be taken from this fact, and the Annuity Tax be again set up to public auction! What would be said if the present Town Council, or the Trustees for the Creditors, if they should establish their right to the seat-rents, were to follow the "use and wont" of this period, and set up the Churches to public auction?

when the office was conjoined with that of City Chamberlain. The following extracts confirm this brief narrative.

23d March, 1660.—There is a long act of this date, declaring that, in consequence of parties being in the practice of understating their rents for the purpose of lessening their proportion of Annuity, it was enacted that the collectors should call all such persons before the Bailies, and cause them to make oath to the rents of their houses.

14th November, 1677.—“The Council agreed to set in tack to Robert Hepburn, the Annuity and seat-rents of the Kirks, for payment of 17,000 merks of tack duties yearly, for the space of three years.”*

20th May, 1681.—“The Council appoint THE ROUP OF THE ANNUITY AND SEAT-RENTS to be upon the 15th June next, and appoint a proclamation to be sent through the city upon Wednesday next, intimating the said roup.”† It does not appear from the Record, who was the successful bidder, nor what sum was obtained for the Annuity and seat-rents.

11th April, 1684.—The Council appointed a Committee to meet with “John Kinnear, and to commune with him anent the taking of the Annuity and seat-rents, and to see what he will offer for them, and report.”‡ It does not appear that any bargain was concluded in consequence of this remit; but Kinnear continued to collect for the city.

18th Nov. 1685.—The Council let in tack for three years, to Henry Hamilton, the Annuity and seat rents, at £1000 *sterling*, yearly, the Annuity to be levied on all houses rented at, and above 16s. 8d. *sterling*, yearly. The seats were to be let by the Council, and the rental to be collected by the tacksman.

13th December, 1689.—The Council let in tack for three years to John Wilkie, the Annuity and seat-rents, for the sum of 20,600 merks yearly, “in the name, for the use, and towards the payment of the Ministers of Edinburgh, their stipends.” The Annuity to be levied on all houses at, and above the yearly rent of 16s. 8d., and the seat-rents to be let according to a list furnished by the Council.§

15th March, 1693.—The Council ordered proclamation to be

* Town Council Records, vol. 29, page 24.

† Town Council Records, vol. 30, page 38.

‡ Records of the Town Council, vol. 31, page 1.

§ Records of the Town Council, vol. 33, page 62.

made, that the Annuity and seat-rents were payable "to John Duncan present tacksman."*

19th April, 1695.—The Council appointed "ane committee anent the roup of the imposition on Ale and Annuity, and their first dyat of meeting to be upon Monday next, at 2 o'clock in the afternoon."†

21st August, 1695.—On the report of a committee, the Council "resolved, that the quarterly pensioners, whether payable by the Kirk Treasurer or Town Treasurer, whose houses exceed not £2, 10s. *sterling*, be free of *Annuity*."‡

3d Jan., 1696.—The Council took the collection of the *Annuity* and seat-rents into their own hands, and "appointed William Carfrae and James Borthwick collectors."§

25th August, 1697.—"The Council, upon ane petition given in by Isobel Grahame, relict of Mr. James Cunningham, representing her poverty and mean condition, appoints Samuel M'Clellan, present treasurer, to pay to the petitioner five pounds sterling, and that for payment of her *Annuity*, street and poors-money, preceeding Whitsunday last, wheranent these presents shall be a warrand."||

8th April, 1698.—The Council appointed Andw. Edgar collector of Annuity and seat-rents, at the yearly salary of 1000 merks.¶

14th March, 1711, "Ordnained the Annuity and seat-rents TO BE EXPOSED TO PUBLIC ROUP in the burgh-room, on the 22d March, at 4 o'clock afternoon, and recommend to the Magistrates and Convener to adjust the conditions of the roup, and cause make advertisement thereof in the *public prints*, wheranent these presents shall be a warrand."**

11th April, 1711.—The Council approved of the conditions of roup of Annuity and seat-rents, for which Andrew Edgar, former collector, as the highest bidder. The following were the conditions of the roup. All houses under 16s. 8d. of yearly rent, were exempted, and the Magistrates retained power farther, to relieve poor people from payment of the

* Records of the Town Council, vol. 34, page 156.

† Records of the Town Council, vol. 35, page 152.

‡ Records of the Town Council, vol. 35, page 193.

§ Records of the Town Council, vol. 35, page 229.

|| Records of the Town Council, vol. 35, page 340.

¶ Records of the Town Council, vol. 35, page 70.

** Records of Town Council, vol. 40, p. 49. This extract will be of importance in the pending question with the Kirk-Session. It shows that the right of the Town Council to levy seat-rents, more than a century ago, was considered so unquestionable, that they were in the habit of letting them out to tacksmen by public auction.

Annuity, by granting them warrants of relief to any amount, not exceeding, in all, £800 Scots. The College of Justice, Ministers and Ministers' widows, were to be exempted. The Churches were to be let according to a subscribed list of rates, and the old sitters were not to be removed. The tack was to endure for two years, and Edgar was to pay "for the use and behoof of the good Town of Edinburgh, towards the payment of the *stipends of the Ministers* thereof, in name of tack duty for the said Annuity and seat-rents, *all and hail* the sum of 21,150 merks, Scots money yearly," or £1175 *sterling*.* The Annuity Office for carrying on the collection and keeping the poynds, was at this period, in the Skinners Hall, Skinners Close, High Street.

PRODUCE OF THE ANNUITY TAX.

The oldest accounts of the revenues of the City, which have been preserved in the Chamberlain's office, commence with the year ending at Martinmas 1691,† and therefore no continued account of the produce of the Annuity Tax at an earlier period

* Records of the Town Council, vol. 40, page 65 to 73.

† At this date, the Ale duty was let on lease for £4000 sterling, and in 1694, it was let for £4250, and the Annuity Tax, at the same time, produced about £600, or one-seventh part of the Ale duty. In 1834, the produce of the Ale duty was £2138, 8s. 10d., and the produce of the Annuity £7402, 5s. 8d., or three and a half times the amount of the Ale duty. Hence, in 1694, every family who paid *seven* shillings for the support of the municipal expences of the burgh in the shape of Ale duty, paid *one* shilling for the support of the Church in the shape of Annuity Tax; but in 1834, every family who paid *seven* shillings for the municipal expences of the burgh, in the shape of Ale duty, paid *twenty-four* shillings for the support of the Church, in the shape of Annuity Tax; consequently, the pressure of the Annuity Tax for the support of the Church, as compared with the pressure of the Ale duty Tax, for the support of the Municipal Government of the city, has *increased twenty-four fold* since 1694!

In 1694, the duty on wines and liqueurs was let on lease for £2055, 11s. 1d. *sterling*, and in 1836, the same duty was let for £175; but at the former period, the duty was levied on all wines and liqueurs used in private families; while at present, it is only levied on what is sold in taverns and other places of public resort. Those who lament the degeneracy of the present age, and who contend that intemperance has greatly increased since the period referred to, will find these *facts* difficult to reconcile with their theories, when they consider that the population of Edinburgh, Leith, the Canongate and West Church parishes, over which the Ale duty is leviable, has increased nearly fourfold since 1694.

can be procured. From that date to 1722, the Annuity and seat-rents, are always entered in one sum, because they were always applied to one purpose—the payment of the Ministers' Stipends. As, therefore, the produce of the Annuity alone cannot be obtained, the following table shows the net produce of the Annuity, together with the seat rents:—

Year ending at Martinmas.	Net produce of Annuity and seat-rents.			Year ending at Martinmas.	Net produce of Annuity and seat-rents.		
	£	s.	d.		£	s.	d.
1691	1144	8	10 $\frac{1}{4}$	1707	1033	1	8
1692	1144	8	10 $\frac{1}{4}$	1708	1014	17	2 $\frac{1}{4}$
1693	1127	15	6 $\frac{1}{4}$	1709	1018	17	4 $\frac{1}{4}$
1694	1127	15	6 $\frac{1}{4}$	1710	1169	10	8 $\frac{1}{4}$
1695	1127	15	6 $\frac{1}{4}$	1711	1175	16	8
1696	996	0	8 $\frac{1}{4}$	1712	1175	16	8
1697	1085	7	7 $\frac{1}{4}$	1713	1125	0	0
1698	1056	13	4	1714	1125	0	0
1699	985	17	9 $\frac{1}{4}$	1715	1083	6	8
1700	941	14	10	1716	1083	6	8
1701 $\frac{1}{2}$	1000	0	0	1717	1000	0	0
1702*	130	11	1 $\frac{1}{4}$	1718	1254	4	1 $\frac{1}{4}$
1703*	130	11	1 $\frac{1}{4}$	1719	1256	9	5 $\frac{1}{4}$
1704*	130	11	1 $\frac{1}{4}$	1720	1243	19	5 $\frac{1}{4}$
1705*	130	11	1 $\frac{1}{4}$	1721	1044	17	0
1706	1079	4	5 $\frac{1}{4}$	1722	1044	17	0
£13339 7 7 $\frac{1}{4}$				£17849 0 8 $\frac{1}{4}$			
Average, 833 14 2 $\frac{1}{4}$				Average, 1115 11 3 $\frac{1}{4}$			

In 1723 and the succeeding years, the *gross* amount of Annuity *leviable*, and the gross amount of the rental of the Churches, are stated separately; but the expences for both are included in

‡ The following entry occurs in the proper revenue accounts of this year:—"Item, Annuity and seat-rents collected by Andrew Edgar from Whitsunday 1700 to Whitsunday 1701, may be computed only, because of the late fires, at the sum of £1000 *sterling*." The fires referred to, took place in the Parliament Square and neighbourhood, when much valuable property was destroyed, which caused great distress, and gave a severe blow to the prosperity of the city. It was in consequence of these fires, that the Friendly Insurance Company was established.

In the proper revenue accounts for the four years marked thus,* the following entry occurs:—"By John Duncan of Annuity and seat-rents *which is suspended upon compensation* for the sum of £130, 11s. 1d. $\frac{1}{4}$." It does not appear what the precise nature of the arrangement entered into with the tacksman was, but there can be no doubt that the object of it was to relieve the inhabitants, with perhaps, some exceptions, from payment of the Annuity and seat-rents, in consequence of the loss which they sustained by the late fires.

one sum, and the irrecoverable arrears of the Annuity are so mixed up with the valued rental of the unlet seats, that it is impossible to ascertain the *net* produce of either branch of revenue apart from the other. This complicated mode of stating the account is rendered still more complex in 1729 and the succeeding years, by mixing up the poors' money, which appears to have been then levied, for the first time, with the other two branches of revenue. The following account, therefore, shows the *gross charge* for the Annuity each year, without making any allowance for irrecoverable arrears, or for the expences of collection. The net produce may be estimated at about 20 per cent. less than the gross charge.

Year ending at Martinmas	Gross amount of Annuity leviable.			Year ending at Martinmas	Gross amount of Annuity leviable.		
	£	s.	d.		£	s.	d.
1723	888	10	6	1736	825	0	0
1724	845	5	0	1737	859	0	0
1725	864	4	0	1738	901	0	0
1726	866	16	0	1739	884	0	0
1727	931	0	6	1740	921	6	6
1728	931	9	6	1741	904	13	0
1729	851	5	6	1742	883	3	0
1730	831	5	0	1743	870	15	0
1731	848	5	0	1744	901	9	0
1732	826	1	0	1745	935	9	6
1733	868	0	0	1746	910	14	6
1734	837	7	6	1747	893	2	0
1735	847	3	0	1748	875	0	6
£12258 12 6				£11564 13 0			
Average, 864 10 2 $\frac{3}{4}$				Average, 889 11 9 $\frac{3}{4}$			

The following statement, which has been made up with great care from the proper revenue accounts of the City, shows the net produce of the Annuity Tax, for each of the twenty years ending at Whitsunday, 1768, with the amount actually paid during the same period for the stipends of six of the City Ministers, which were authorised to be paid from this fund by the act of 1661. Also the amount of the surplus remaining in the hands of the Town Council, which, after paying the stipends, was applied to other purposes without any legal authority, and contrary to the provisions of the act.

Year ending at Whitsunday.	Net produce of Annuity, after deducting irrecoverable arrears, and Collector's salary.			Amount paid for the stipends of six ministers, at the rate of 2500 merks, or £138, 17s. 9 $\frac{1}{4}$ each.			Amount of surplus illegally applied to other purposes contrary to the provisions of the Act 1661.		
	£	s.	d.	£	s.	d.	£	s.	d.
1749	761	19	7 $\frac{1}{2}$	833	6	8	...		
1750	729	6	2	833	6	8	...		
1751	729	6	2	833	6	8	...		
1752	784	10	2	833	6	8	...		
1753	813	15	3	833	6	8	...		
1754	803	0	0	833	6	8	...		
1755	849	18	9	833	6	8	32	7	1
1756	862	3	3	833	6	8	44	16	7
1757	860	15	7 $\frac{1}{2}$	833	6	8	43	8	11 $\frac{1}{2}$
1758	860	15	7 $\frac{1}{2}$	833	6	8	43	8	11 $\frac{1}{2}$
1759	937	18	1	833	6	8	120	11	5
1760	937	18	1	833	6	8	120	11	5
1761	1000	16	8 $\frac{1}{4}$	833	6	8	188	10	0 $\frac{1}{2}$
1762	1000	16	8 $\frac{1}{4}$	833	6	8	183	10	0 $\frac{1}{2}$
1763	1027	2	10	833	6	8	209	16	2
1764	1027	2	10	833	6	8	209	16	2
1765	1108	19	2	833	6	8	291	12	6
1766	1108	19	2	833	6	8	291	12	6
1767	1145	6	10	833	6	8	328	0	2
1768	1198	13	1	833	6	8	381	6	5
£	18,548	19	1 $\frac{1}{2}$	16,666	13	4	2484	8	5
Less the deficient collection of first six years,							378	2	7
Total amount illegally applied,							£2106	5	10

Although this sum of £2106, 5s. 10d. was unquestionably, illegally applied; it is manifest that the illegality arose entirely from the Town Council giving the Ministers smaller stipends than they were fairly entitled to expect. There could be no question that the Council were authorised to pay annually to the six ministers any sum not exceeding £1055, 11s. 1d. (19,000 merks) which the Annuity might produce. The doubt as to their powers could only arise with regard to any increase beyond this amount, and as the whole sum of 19,000 merks divided among the six ministers, would have made the stipend of each only £175, 18s. 6d., the Town Council ought to have raised their stipends to this sum in 1765, when the ANNUITY, for the first time, amounted to the sum authorised to be levied by the acts of 1649. If they had paid 19,000 merks annually, in place of a

surplus, there would have been a deficiency of £2562, 1s. 6d. Hence, the Town Council were chargeable, not so much with illegally *levying* more than they were entitled to levy, as with *misapplying* part of those funds which they were fairly entitled to levy. But since they did not apply the whole sum in the manner required by the act, the surplus was, for this reason, illegally *levied* as well as illegally applied. The fact that a certain sum only was paid, would be held to be a conclusive proof, that it was all that was necessary to be paid, and when such men as Dr. Hugh Blair accepted of a stipend of £138, 17s. 9d., it appears that the smallness of the sum did not exclude men of the greatest eminence.

The following statement is made up, like the former, from the proper revenue accounts of the City. It shows the produce of the Annuity Tax for the twenty years ending at Whitsunday, 1788, with the sum actually paid for the stipends of six ministers during each of those years, and the surplus remaining in the hands of the Town Council, which was illegally levied and applied in contravention of the provisions of the Act of 1661.

Year ending at Whitsunday.	Net produce of Annuity, after deducting irrecover- able arrears and Collector's salary.			Amount paid for the stipends of six Ministers.			Amount of surplus illegally levied and applied contrary to the provisions of the Act of 1661.		
	£	s.	d.	£	s.	d.	£	s.	d.
1769	1224	6	4	833	6	8	390	19	8
1770	1243	4	10	833	6	8	409	18	2
1771	1237	1	4 ¹ / ₂	833	6	8	403	14	8 ¹ / ₂
1772	1218	18	8	833	6	8	385	12	0
1773	1213	6	4	833	6	8	379	19	8
1774	1185	17	7 ¹ / ₂	833	6	8	352	10	11 ¹ / ₂
1775	1207	6	9	833	6	8	374	0	1
1776	1545	17	7 ¹ / ₂	833	6	8	712	10	11 ¹ / ₂
1777	1445	7	0	833	6	8	612	0	4
1778	1448	5	3	833	6	8	614	18	7
1779	1463	17	7	833	6	8	630	10	11
1780	1474	3	6	833	6	8	640	16	10
1781	1495	10	5	833	6	8	662	3	9
1782	1548	10	8	896	13	4	651	17	4
1783	1531	11	2	960	0	0	571	11	2
1784	1558	14	0	960	0	0	598	14	0
1785	1618	10	11	960	0	0	658	10	11
1786	1690	1	10	960	0	0	730	1	10
1787	1884	10	6	960	0	0	924	10	6
1788	1909	4	4	960	0	0	949	4	4
£	29,144	6	8 ¹ / ₂	17,490	0	0	11,654	6	8 ¹ / ₂

It appears from the above statement, that the sum illegally levied and applied during this period, was £11,654, 6s. 8d., but if the six ministers had been paid 19,000 merks annually, which they were justly entitled to receive, the surplus remaining in the hands of the Magistrates would have been only £8033, 5s.

In 1770, if the tax had been reduced to 5 per cent., as in the case of Montrose, the produce would have amounted to within £30 of 19,000 merks, and would have been considerably more than the sum actually paid to the ministers. By following out the same principle in 1782, the tax might have been reduced to 4 per cent., and the produce would have been within £25 of 19,000 merks, and upwards of £100 above what was actually paid to the six ministers. In 1787, the tax might have been reduced to 3½ per cent., leaving a small surplus.

The New Town appears to have increased very slowly at first; for, although the Annuity Tax was extended over it by the act of 1667, the gross amount leviable in 1778, was only £201; in 1779, £230; and in 1780, £342.

It is a curious fact that the modified stipends of 2500 merks, or £138, 17, 9½, which the ministers agreed to accept, by the contract of 1655, in full of all claims against the Annuity, and other Ecclesiastical revenues of the City, continued to be paid with occasional reductions, *but without any increase*, for 127 years. In 1782, they were first increased to 2690 merks, or £149, 8s. 10½d., as appears from this account, and in 1783 they were farther increased to £160.

The next statement for the period of twenty years, ending at Whitsunday 1808, is taken from a return prepared by Mr. Archibald Bruce, city accountant, respecting the Ecclesiastical revenues of the city, in compliance with an order of the House of Commons, of date 2d August, 1833. This abstract of his statement, shows the net produce of the Annuity Tax, the sum actually paid to the six ministers, and the produce remaining in the hands of the Town Council, which they levied without any legal authority, and applied to other purposes, in contravention of the provisions of the Act of 1661. From the proper revenue accounts of the city, the produce for the two following years has been added, because the Ministers succeeded in establishing their right to the whole produce of the tax, from the date of their summons in their action of declarator against the Magistrates, which was raised in September 1810; and there-

fore, with this addition, the account terminates the period during which the Town Council levied and applied the tax for civic as well as for ecclesiastical purposes.

Year ending at Whitsunday.	Net produce of Annuity.			Stipends actually paid to the six ministers.			Surplus remaining, which was illegally levied and applied.		
	£	s.	d.	£	s.	d.	£	s.	d.
1789	1996	0	0	960	0	0	1036	0	0
1790	2367	17	10	960	0	0	1407	17	10
1791	2421	0	9	960	0	0	1461	0	9
1792	2530	16	5	960	0	0	1570	16	5
1793	2564	12	6	960	0	0	1604	12	6
1794	2757	16	6	960	0	0	1797	16	6
1795	2783	11	2	1200	0	0	1583	11	2
1796	2821	5	11	1200	0	0	1621	5	11
1797	2821	7	9	1200	0	0	1621	7	9
1798	2899	12	9	1200	0	0	1699	12	9
1799	2881	8	5 $\frac{1}{2}$	1200	0	0	1681	8	5 $\frac{1}{2}$
1800	3053	19	7	1200	0	0	1853	19	7
1801	3055	8	1	1200	0	0	1855	8	1
1802	3245	16	4	1200	0	0	2045	16	4
1803	3402	0	8	1560	0	0	1842	0	8
1804	3600	10	8	1560	0	0	2040	10	8
1805	3415	7	0	1560	0	0	1855	7	0
1806	3601	17	8	1560	0	0	2041	17	8
1807	3767	13	10	1560	0	0	2207	13	10
1808	3774	18	2	1980	0	0	1974	18	2
	59,763	2	0 $\frac{1}{2}$	25,140	0	0	34,623	2	0
1809	4477	5	5	1980	0	0	2497	5	5
1810	4806	17	9	1980	0	0	2826	17	9
	£69,047	5	2 $\frac{1}{2}$	29,100	0	0	39,947	5	2 $\frac{1}{2}$

It appears from this statement, that although during the twenty-two years, preceding the date from which the Clergy established their claim to the whole proceeds of the Annuity Tax, the six ministers received, in whole, £5877, 16s. 2d. *more* than the sum of 19,000 merks annually, yet the rental of the city had increased in such a rapid manner, that the surplus remaining in the hands of the Town Council, and which was misapplied to other purposes, amounted to the sum of £39,947, 5s. 2d.; and that if the Tax had been reduced to 2 $\frac{1}{2}$ per cent., during the whole of this period, the produce would have been very nearly equal to the actual expenditure.

The following statement shows that during this period, after

applying the merk per ton, in payment of the stipends of *all* the Ministers of the City, and making up the deficiency from the produce of the Annuity Tax, there remained in the hands of the Town Council £22,659, 4s. 2½, or more than *one-third* of the total amount levied, which was applied in payment of the municipal expences of the city. Hence, until the passing of the Act of 1809, while the inhabitants *appeared* to pay 6 per cent. for Ministers' stipends, they paid only 4 per cent. for that purpose, and, under the same name, 2 per cent. for municipal purposes.

"It appears, however, that the Annuity was always viewed as an Assessment for the maintenance of the Clergy, though it was not until several years subsequent to 1809, that this Tax, and the merk per ton, were fixed to be the absolute property of the Clergy. Until this was settled, the Clergy received a fixed allowance as stipend. In 1788-89, the first of the twenty years embraced by the present return, the regular stipend was £160 per annum. In 1794, it was raised to £200; in 1802 to £260, and in 1807, to £300.* During the 20 years preceding 1809, the total sums paid for stipends, amounted to £63,246 19 2½. While the Annuity collected in the same

period, was	-	-	-	59,763	2	0½
Excess paid for stipends,	-	-	-	3483	17	2
But taking the merk per ton into account,	-	-	-	26,143	1	4½

There was collected of the Annuity and merk per ton, above the stipends paid to the Clergy, as shewn in the preceding statements,†

£22,659 4 2½

EXTENSIONS OF THE ROYALTY OF THE CITY.

It has been asserted with great confidence, that the Town Council were not authorised to levy the Annuity Tax in the extended royalty, until after the passing of the act of 1809. This assertion has been reiterated so often that it has obtained very general credit, although it is utterly unfounded. With every extension of the royalty the Town Council obtained power to extend the Annuity Tax, but *until the passing of the*

* This was exclusive of £30, paid by the Town Council, as Income Tax.

† Statement by Mr. Bruce, City Accountant, in compliance with the order of the House of Commons, of 2d August, 1833, page 17.

Act of 1809 with "the smuggled clause," they never obtained power to levy more than a reasonable sum for the stipends of six ministers; none of the provisions of the Act of 1661, having ever been either modified or repealed. By all these Acts the Town Council merely obtained power to levy the same sum over extended boundaries, which should have had the effect of reducing the burdens of the inhabitants within the original boundaries of the city. It has been shown that the Town Council of Montrose, honestly carried their Annuity Act into effect, making a reduction in the rate of assessment as soon as the increased rental of the town enabled them to raise a sufficient sum by a lower rate of assessment, and that the Court of Session unanimously approved of the principle adopted by them. But the Town Council of Edinburgh always levied the full amount of six per cent., although the rental of the city had increased in the following extraordinary ratio :—

Year ending at Whitsunday.	Rental of the city.	Number of houses in the city.	Year ending at Whitsunday.	Rental of the city.
	£			£
1634	16,009	5071	* 1809	120,971
1688	26,000	6012	1819	167,288
1751	31,497	§ 6845	† 1830	246,532
1801	81,029		‡ 1836	208,015

The rental for the first three years is given on the authority of Maitland; and for the other years, it is taken from the books made up for the collection of the Land Tax. It was from the same source that Maitland obtained his information. These books *include* the rental of the houses occupied by the Members

‡ At this period the number of houses in Edinburgh, *including the suburbs*, was 9064.—*Maitland's History of Edinburgh*, page 217.

* The act with "the smuggled clause" was passed this year.

† The rental was at its highest amount at this period.

‡ The great difference between 1836 and 1830, arises from the reduction in rents. The gross rental of the city was not at its highest amount until several years after houses were at their highest, in consequence of the stent-masters being in many instances unwilling to alter the rental in their books. For the same reason, the gross rental of the city, as valued by them, is not yet at its lowest, although many intelligent persons are of opinion that house-rents will not be lower than they are at present

of the College of Justice, and also houses under £5 of yearly rent; neither of which are included in the rental afterwards given for the collection of the Annuity.

FIRST EXTENSION OF THE ANNUITY OVER THE NEW TOWN.

The first extension of the boundaries of the royalty took place by the act of 1767, which authorised the *Annuity* to be levied as within the ancient royalty. The following is the section of the act on this subject:—Sec. 10. “The Magistrates, &c. of Edinburgh shall have full power to appoint stentmasters, to levy from the proprietors and possessors of all houses upon the ground hereby annexed, an equal portion of the cess, ANNUITY, poor’s money, and watch money, payable by the City of Edinburgh, *as within the present Royalty.*” It is quite clear that this clause does not in any respect alter the provisions of the Act of 1661, but merely extends the bounds over which the provisions of that Act are to be operative.

SECOND EXTENSION OF THE ANNUITY TAX.

The *second* extension of the royalty took place by the Act 1785, which also extended the *annuity* over the lands added to the royalty by that act. The following is the clause extending the Tax, from which it will be seen that it does not, in any respect, interfere with the provisions of the act of 1661. Sec. 85. “The Magistrates and Council may appoint stentmasters to levy from the proprietors and possessors of all houses built on the grounds hereby annexed to the said royalty, an equal portion of the cess, ANNUITY, poor’s money, and watch money, payable by the inhabitants of Edinburgh, in the same manner as they are now levied within the present royalty.”

THIRD EXTENSION OF THE ANNUITY TAX.

The *third* extension of the royalty was authorised by the act 1786, which affected only the small piece of ground on which York Place is built, and over which the Annuity Tax was in like manner extended, without interfering with the act of 1661.

FOURTH EXTENSION OF THE ANNUITY TAX.

We come now to the *fourth*, and by far the largest extension of the royalty, comprehending the grounds north from Queen Street, which was authorised by the act of 1809. This act contains a clause framed by the Town Council of the same import as the clauses quoted from the other acts. The Council were satisfied with this clause, which would have made no change on the act of 1661, but at the solicitation of the Ministers, they agreed to add section 17, which is totally inconsistent with the notices for the bill, and which completely changed the provisions of the act of 1661. The following is the clause with which the Magistrates and Council were satisfied, and had it not been for the importunity of the Ministers no other clause, respecting the Annuity, would have been introduced into the act.

Sec. II. "And be it enacted, That from henceforth the said Lord Provost, Magistrates, and Council of the City of *Edinburgh*, and their successors in office, shall be, and they are hereby authorised and empowered, to stent or assess, and levy from the proprietors and occupiers of all such houses as are at present built and erected, or shall be hereafter built and erected upon the aforesaid grounds hereby annexed to, and comprehended in the said royalty, an equal proportion of the cess, ANNUITY, poor's money, and other duties, with those stented, or assessed, and levied, *or that may be stented, or assessed, and levied*, by the said Lord Provost, Magistrates and Council, from the proprietors and occupiers of houses in the extended royalty, in the same way and manner, and with such and the same remedies at law, in case of non-payment, as are practised or competent by any law, statute, or custom, within the said extended royalty." It is clear that if this had been the only clause in the Act respecting the Annuity, the act of 1661 would have remained in full force, and the Magistrates would not have been entitled to levy more than would provide reasonable stipends for six ministers, as decided in the case of Montrose, and from the present amount of the rental of the City, *one-third* of the six per cent. would have been more than sufficient for this purpose.

SMUGGLED CLAUSE.

Every one knows that when any local act is to be applied for, it is necessary, in compliance with the standing orders of the

House of Commons, for parties who intend to introduce the bill to publish notices in the newspapers and on the church doors, distinctly specifying *all the objects* to be embraced in the bill, and that any clause beyond the notices which finds its way into a bill, is considered a fraud upon Parliament, and is instantly expunged, on the discovery being made, if the bill is not at once thrown out. Clauses of this kind, which are evidently not embraced within the notices, are usually designated "smuggled clauses;" and several cases are on record, in which courts of law have refused to give effect to them. The following is the "Notice," for the act of 1809.

NOTICE.—"In pursuance of the standing orders of the Honourable House of Commons, notice is hereby given, that the Lord Provost, Magistrates, and Council, intend to bring in a bill during the ensuing Session of Parliament, for extending the royalty of the city of Edinburgh, over certain grounds sometime ago purchased by the community, and other grounds belonging to the Governors of George Heriot's Hospital, from David Stewart, Esq. and others, with consent of the proprietors.

"EDINBURGH, 20th August, 1808."

It has frequently been stated, that under this notice, it was incompetent to introduce a clause extending the Annuity over the district proposed to be included within the royalty. This is one of the many errors which the public have been led into by inaccurate publications respecting this tax. There can be no doubt, that it was quite competent to introduce the clause originally prepared by the Magistrates extending the Annuity, which has been already quoted, forming the second section of the act. The only idea which could be attached to the extension of the royalty, mentioned in the "Notice," was, that while the inhabitants of the new district were to enjoy the same advantages, they were to bear the same burdens as the inhabitants of the existing royalty; and besides, in the charters granted to the feuars, it was expressly declared that whenever the royalty was extended over their grounds, they were to be subjected to the *Annuity* and all other local taxes. It is, therefore, altogether at variance with the facts of the case, to contend that, by the notice, it was incompetent to introduce a clause making the Annuity Tax payable over the new district.

It was, however, manifestly incompetent, under the notice, to

introduce any clause making a change in the property of the Tax, or any clause for increasing the sum formerly authorised to be raised, or any clause authorising it from being limited to the payment of the stipends of 6 Ministers to be applied in payment of the stipends of all the 17 existing ministers, together with such additional number as might be added for the two new Churches authorised by the act to be built; all these matters being clearly beyond the "Notice." Yet a clause, framed by the Ministers, *which effected all these changes, was, at their urgent entreaty, smuggled into the act without the knowledge of the rate-payers.* The Ministers obtained the consent of the Town Council to the introduction of the clause, in consequence of a threat that they would oppose the bill, unless their request was complied with. That all these changes followed from the insertion of the clause, was afterwards distinctly proved by the opposite decisions of the Court in the cases of Edinburgh and Montrose, under circumstances precisely similar, with the exception of the one party having the advantage of "the smuggled clause," which follows, and the other having no such auxiliary.

Sec. XVII. "And to prevent *all doubt respecting the legality* of levying and applying to this and similar purposes, the ANNUITY of 6 per centum on the rents of houses, shops, booths, cellars, and premises, which the said Lord Provost, Magistrates, and Council, *have been in use to levy* within the city, along with the other funds or revenues which are applicable, either in whole or in part, to the payment of Ministers' stipends; be it enacted and declared, That the said Lord Provost, Magistrates, and Council, and their successors in office, shall be, and they are hereby authorised and empowered not only to levy, *as they have hitherto been in use to levy,* the said ANNUITY of 6 per centum upon the yearly rents of all inhabited houses, shops, booths, and cellars, and premises within the said city and royalty thereof, *whether extended by the said recited acts or by this act,* and to apply the same as they have *hitherto been in use to apply it;* along with the aforesaid other funds or revenues, as far as those other funds or revenues are so applicable for the payment of the stipends OF ALL THE MINISTERS of the present Churches of the said city and royalty; but also to apply an equal proportion of the said ANNUITY, in common with the aforesaid other funds or revenues, in so far as these other funds or revenues are so applicable, for the payment of the stipend or stipends of such minister or ministers, *as may be appointed to the Churches which*

are required to be built under the authority of this act, in manner before-mentioned."

The law respecting parliamentary notices, was determined in a case exactly in point, affecting Glasgow, which was decided by the Second Division of the Court of Session, 27th November, 1832. It is reported by Shaw and Dunlop, vol. xi. page 119. It was found, according to the rubric of the report, that "the Court will not enforce a clause in a private act, in regard to which no notice was given, in applying therefore, in conformity to the Law of Parliament." An outline of the case will show that in all its important features, it stood in precisely the same situation as the Edinburgh Annuity question with the clause smuggled into the act of 1809. Prior to 1792, a toll-bar stood on the road from Glasgow to Yoker Bridge, between Glasgow and the suburb of Anderston, in the same relative situation as the toll-bar at Jock's Lodge, between Edinburgh and Portobello, so that parties could not pass between Anderston and Glasgow without paying toll. In that year a temporary act was passed, in which it was, *inter alia*, enacted, that if the inhabitants of Anderston should agree to pay the Trustees under the act, £300, the toll-bar was to be removed *beyond* the village, so that parties passing between it and Glasgow, would not be obliged to pass through the toll-bar. The money was immediately paid, and the bar removed. In 1803 the act was renewed for 21 years, so that it expired in 1824. In the view of its expiring, the usual Parliamentary notices were given by the Trustees in 1823, to the effect that they were to apply for "leave to bring in a bill to continue, amend, enlarge, and explain" the acts then in force; and accordingly a Bill was brought in and passed into an act, which appointed, not the former, but other Trustees for carrying it into effect. Notwithstanding the terms of the Notices, in the new act, the former statutes were expressly *repealed*, and no mention was made of the agreement as to the removal of the toll-bar beyond Anderston. On the contrary, it contained a very broad general clause, authorising the Trustees to erect "a gate or gates, turnpike or turnpikes, on, upon, or across any part or parts of the said roads from Glasgow to Yoker Bridge, and road of communication respectively, or of any lanes or roads leading into or out of the same at their junction therewith."

The village of Anderston had greatly increased, which proved an irresistible temptation to the cupidity of the Trustees. They accordingly resolved, in terms of their smuggled clause,

which, if operative, gave them ample powers for the purpose, to replace the toll-bar in its original situation between Glasgow and Anderston, for the purpose of raising a large revenue from the inhabitants of the city and suburbs, with the view, no doubt, (as in the case of Edinburgh and all other large towns) of applying the money of the citizens in improving the roads passing through the estates of the Trustees, in distant parts of the county. In the mean while, the Magistrates of Glasgow and Anderston became aware of the clause, and of the intention of the Trustees, and resolved to oppose their proceedings. The latter, therefore, judging it to be the most advantageous course which they could pursue, under the circumstances, now instituted a process of declarator, to which they called, as parties, the Magistrates of Anderston and of Glasgow, to have it declared, that under the general powers in the statute, they were entitled to place a bar at the east end of Anderston, between it and the city of Glasgow."

*"Pleaded in defence,—*The NOTICES for the new act having been to continue the former statute, and not to repeal it, the trustees could not found on a clause of repeal *obtained contrary to the NOTICES to the public, and to the parties concerned.* As, consequently, the trustees under the new act were liable to fulfil the obligations of their predecessors, the contract as to the removal of the toll-bar continued binding on them, *notwithstanding the repeal.*" After hearing parties, the Lord Ordinary MEDWYN, pronounced a long interlocutor, in which he "Finds, that the NOTICE given, previous to applying for the said act, did not import that there was any intention to repeal the former acts, *or to get rid of any contract or obligation entered into with third parties under the former acts:* and therefore finds, that the broad terms of the above clause cannot be interpreted to mean that the trustees have the right to annul the agreement entered into with their predecessors." The trustees reclaimed; but the Court unanimously adhered to the interlocutor of the Lord Ordinary. We shall quote the speech of Lord Meadowbank in pronouncing judgment in this case at full length, because it is so decided on the point of the *Notices*, and because every word of it applies with increased force to the clause respecting the Annuity Tax smuggled into the act of 1809. LORD MEADOWBANK said—"This is a *most iniquitous attempt to get quit of a permanent contract.* As to the NOTICES, the question is equally clear, *and more important than the other.* The law of Parliament is the law of the land, and Parliament has founded certain NOTICES

to be given for private acts ; and if the law of Parliament is not complied with, and an act is *smuggled through the houses without the Notices thereby required, courts of law cannot be called on to put them in force.* The case is not without precedent in England. When Lord Redesdale was speaker, a bill was passed, affecting his estate, without NOTICE ; and although [as] speaker, he had himself put the question, 'That it do pass,' *it was held inoperative against him.* It is clear, that WHEN AN IMPOSITION IS PRACTISED, *courts of law cannot give effect to statutes so obtained ;* and the parties here never could have expected, under this NOTICE, *that the former act was to be repealed."*

No person who reads this solemn decision of the Court, respecting the clause smuggled into the Glasgow act of 1823, and who compares the 17th section of the Edinburgh act of 1809, with the Parliamentary notice given for the bill, can doubt that in the words of Lord Meadowbank, it was "A MOST INQUITOUS ATTEMPT TO GET QUIT OF A PERMANENT CONTRACT," by which the inhabitants were exempted from all payments for Annuity Tax, except to the extent of providing reasonable stipends for six ministers. And since, in the words of the same learned Lord, "IT IS CLEAR THAT WHEN AN IMPOSITION IS PRACTISED, courts of law cannot give effect to statutes so obtained," it is obvious that the rate-payers may get this surreptitious clause set aside, and the Annuity Tax reduced to about 2 per cent., by trying the question before the Court.* This could be easily effected by the rate-payers agreeing to subscribe an obligation to pay any sum which might be required to try the question, *not exceeding the amount of the Annuity Tax, payable by each subscriber for one year.* The proposed responsibility and expence being so small, and the resistance to the Tax so general, there would be no difficulty in getting a sufficient sum subscribed in a very short time, if a respectable committee, having the public confidence, were organized to take charge of the matter. A

* Mr. Aytoun had the merit of first suggesting that this might be accomplished. He brought forward a motion in the Town Council, that the opinion of Counsel should be taken on the subject, which was lost by a majority of three. The author was one of the majority. At that period, from the slight examination which he had given to the subject, he thought the matter hopeless, and therefore voted for saving the money of his constituents. He is now satisfied that he was wrong, and that Mr. Aytoun's proposal ought to have been adopted by the Council.

small sub-committee would be required to select an agent and to take charge of the process. The City ought to be divided into very small districts, and *two* persons, known in each district, should be appointed to call on every rate-payer, and after fully explaining the object of the committee, to request his signature to the obligation. The subscribers would be so numerous that the sum eventually required from each, would be very small, even although they did not succeed in the action; of which, however, there could be no doubt,* unless the Court were to find that there was one law for Parliamentary Notices given in Glasgow, and another law for Parliamentary Notices given in Edinburgh.

Having proved that a fraud was committed by the insertion of the seventeenth clause into the Act of 1809, the next point to be determined, is the degree of guilt which attaches to the different parties concerned in the transaction. From what has been already stated, it is obvious that the public could not know any thing of the matter. From the terms of the Notice required to be published for the protection of their rights, in compliance with the standing orders of the House of Commons, they did not receive any information of the object contemplated. The Magistrates and Ministers were the only other parties con-

* It is to be observed, that the Magistrates of Edinburgh, did not plead that the "smuggled clause" was beyond the notices, nor did they even allude to the notices at all, for by doing so, they would have destroyed their own plea, which was, that *they* were legally entitled to draw the whole produce of the Annuity, as they had been in use to do, paying the ministers reasonable stipends out of the fund, and retaining the balance in their own coffers for civic purposes. Had they urged the insufficiency of the notices, and the consequent illegality of the clause, the Court must have rejected the claims of both parties, and must have decided, as in the case of Montrose, that the Town Council were not entitled to levy more than was sufficient for the stipends of six ministers in terms of the act of 1861. Both the Magistrates and Ministers agreed that the inhabitants, who had been deceived by them in consequence of the terms of the notice, should pay the full sum of 6 per cent. They only differed about "the appropriation" of the fruits of the public robbery. Each of the parties contended that the *whole* spoil belonged to them *alone*, but it was ultimately awarded to the Ministers, who unquestionably had the principal share in the deception which was practised on the rate-payers. The Magistrates always hoping to gain the cause, which they ultimately lost, only by a majority of one, never could be expected to object to the notices; and, therefore, the Court never had an opportunity of pronouncing an opinion regarding them.

cerned; and the account which each of them gave of their share in the fraud is recorded in the proceedings of the Court of Session, in the pleadings in an action of which it is now necessary to give some account.

Shortly after the passing of the act of 1809, the Ministers resolved to reap the fruit which they expected from the insertion of the Smuggled Clause. Being, at that time, in receipt of stipends of £330, they applied to the Council for an augmentation; but they considered this sum sufficient, in which opinion, it has been shown, the Lord President afterwards concurred. Having agreed to the insertion of the clause, from a conviction that it authorised them to apply part of the Annuity Tax to civic purposes, "as they had been in use to apply it," and their annual revenue being less than their expenditure, they were not disposed to give up any additional part of it to the Clergy. The Lord Provost accordingly wrote to the Ministers, declining to make any advance, and complaining of their frequent applications for augmentations. He told them if they were not satisfied with their stipends, they might take legal steps to establish their rights; but that it was "impossible, for the Magistrates, *as guardians of the funds of the community*, voluntarily to agree to any further augmentation at the present time." This letter appears to have brought matters to the point which the Ministers anxiously desired; for it was dated 9th August, 1810, and on the 28th September following, their action of declarator was brought into Court. They concluded by wishing to have it found that they had "right to certain funds, and to have manses provided for them, and that the town must hold count and reckoning accordingly, or otherwise pay them £750 a-year of stipend, and £75 for house-rent."* This very modest proposal showed the great value which they attached to the smuggled clause. The following are the funds to which they laid claim:—

1. That the common good was liable for their stipends.
2. That they had right to certain Church lands and revenues.
3. That they had right to the whole 6 per cent. Annuity Tax.
4. That they had right to the merk per ton and Pack.
5. That they had right to the seat-rents of the Churches.†
6. That they had right to Lady Yester's Mortifications.

* Speech of the Lord President, 19th Jan. 1813.

† If they had succeeded in this claim, would they have complained that the seat-rents were too high?

7. That they had right to the impost on wine.
8. That they had right to a payment from the Ale-duty.
9. That they had right to manses, or an allowance of £75.

The pleadings and other papers in this action, form a quarto volume of 985 pages, from which the following quotations are taken, commencing with the account which the Magistrates give of their share in the fraud which was perpetrated on the public.

"Previous to passing the Act 1809, *considerable doubts were entertained* by many of the best informed and most respectable citizens, *whether the Magistrates*, under authority of the Act 1661, and subsequent Acts, *were entitled to levy from the inhabitants more than 19,000 merks*, (£1055, 11s. 1½d.) in name of Annuity, *and it was questioned* if the sum thus raised could be applied in payment of more than the stipends of *six ministers only*. The present pursuers [Ministers] *took the alarm*, and after advising with Counsel, and consulting with the Magistrates, they obtained permission for the introduction of the following clause into the Act 1809."*

This is a distinct admission, that many of the most respectable inhabitants were of opinion, that the Magistrates had no right to levy more than was necessary for the stipends of *six ministers* in name of Annuity Tax. By concealing their agreement with the Ministers to take power in the bill, to levy the full sum of six per cent. for the stipends of *eighteen ministers*, they were parties to a deception practised on these "respectable citizens," by which the amount of the Annuity Tax leviable from them, was increased three-fold. To this extent, a fraud was evidently practised on them. The Ministers will be now allowed to state their share in the transaction.

"When the Act for extending the Royalty was proposed, the Memorialists [Ministers] saw that a *proper occasion* was presented for *adjusting their rights*, and therefore they fairly announced to the defenders [Magistrates] that the bill would be opposed, if it only contained such a general clause respecting the Annuity, as had been inserted in the two previous statutes. This gave rise to a very deliberate discussion which terminated in 1809, by the insertion in the Act of that year, of a clause which the defenders have not yet ventured to deny, *was introduced solely at the request of the Ministers*—*was written by them*—and that alterations proposed by the Dean of Faculty, which appeared to *restrict their interests* under the Annuity, were by them successfully resisted. The Dean, at last, adjusted a clause to the *satisfaction of all parties*, and the Memorialists [Ministers] aver, that that learned person is satisfied, at that this moment,

* Pleadings of the Magistrates in their process with the Ministers, page 28.

that the construction now given to it by them, is the just one. Although *they* thus *had the dictating of the clause themselves*, and expected that it would put an end to all future doubt, yet *they are now told* that this section is one which not only *does not assist them at present, but which confirms all that their antagonists* [the Magistrates] *maintain with respect to this branch of the subject.*"*

Here the Ministers boast that the clause was written by them, and introduced solely at their request; that they had the dictating of the clause themselves, and expected that it would *put an end to all doubts*; in other words, that it would increase the liabilities of the inhabitants in a three-fold ratio, without their knowledge or consent; and that the whole produce of this three-fold increase would go into their pockets, in place of being applicable partly for stipends, and partly for the municipal expenses of the City. If the Ministers had wished to act fairly towards the inhabitants, they would have published additional Parliamentary Notices, explicitly stating all the objects they had in view, and then the inhabitants would have had no cause of complaint, if they did not attend to their own interests. A case occurred during the present year, in which this straightforward course was adopted. The Town Council gave Parliamentary Notices of their intention to bring in a bill for the improvement of Leith Harbour. Certain inhabitants of Leith, wishing to include matters in the bill which were not embraced in these Notices, published Notices of their own, explaining their intentions. The Dock Commissioners, having objects in view differing from both of the other parties, published additional Notices explanatory of their plans. Thus there were three different Parliamentary Notices given for the bill, because the parties were aware that, by the law of Parliament, nothing could be introduced into a bill which was not embraced within the Notices. Why did the Ministers not adopt the same course in 1809? They knew that if they had published Notices, fairly explaining their intention, both the Town Council and the inhabitants would have resisted the attempt, and their object would have been defeated.

The peculiar structure of the clause is deserving of notice. The fact is, that the Town Council were completely *outwitted* by the Ministers. They consented to its introduction under the belief, that it sanctioned their right to apply the Annuity as they

* Pleadings of the Ministers in their process with the Magistrates, page 37.

had been in use to apply it, both to *civic* and *ecclesiastical* purposes, while the clause was so artfully framed, that although it *appeared* to sanction the usage in *both* cases, it was *intended* by them, to sanction the usage only so far as regards the application of the fund to *ecclesiastical* purposes. This did not escape the acute eye of Lord Gillies. He says "It is a clause certainly drawn in a very *peculiar* manner, but it was so drawn, I believe, with *intention*; though I here speak from the information that is given me, and my opinion is formed without reference to the *history of the act which I am not entitled to attend to.*" The Ministers explain the "cunning craftiness" with which it was drawn in the following passage, which would do honour to the College of Jesuits.

"Hence, the words 'as they have been in use to levy it,' *were put in by the Memorialists* [Ministers] partly for the very purpose of excluding this idea, [*i. e.* that it was restricted to 19,000 merks,] because it was notorious to every body, that they had been in use to levy a great deal more. Besides, although the Act does certainly empower the Town Council 'to levy the Annuity, as they have hitherto been in use to levy it,' and 'to apply it as they have hitherto been in use to apply it,' it as certainly adds to the very same sentence '*for the payment of the stipends of all the Ministers,*' &c. Between these two clauses *there are certainly nineteen intervening words, descriptive of the other subjects,* that were to be supplied; but these do not break the continuity of the sense of the clause, which goes on with one clear and specific meaning. This meaning must appear to any person who looks steadily through the sentence, and does not permit itself to be confused by the verbosity of statutory language, to be, that the usage of levying and applying the Annuity, is sanctioned *just in so far as the Town Council had been in use to levy and apply it for the payment of Ministers' stipends, AND NOT ONE HAIR'S BREADTH FURTHER.*"*

It was said by the Ministers in their pleadings, and it has frequently been said by their apologists since that time, that the Town Council were perfectly aware of their object in framing the clause; that they were plainly told the object of it was to get the whole property of the six per cent. Annuity Tax transferred to the Ministers, and that it could have no other meaning. The Magistrates give this assertion the most unqualified contradiction. They declare, that "no such proposal ever was made, or could be made, in obtaining this Act."

* Pleadings of the Ministers in their process with the Magistrates, page 39.

" In the third place, It would have been very strange indeed, and very inconsistent with all received ideas of the principles of the Presbyterian Establishment and Constitution, if the legislature had, in the year 1809, thought of bestowing without limit of any kind, and indefinitely, upon the ministers, a Tax, such as the Annuity, that must increase with the progress of this now flourishing capital, perhaps yet in its infancy, and of the ultimate amount of the proceeds of which no conjecture can be formed. Aware of all that the principles of the Presbyterian Establishment require by one conclusion of the libel; the pursuers themselves, accordingly, even now fix a *maximum* to their stipends for the present, and demand *only* £750, *per annum*, under that head. *Do they expect your Lordships, then, to believe, that the legislature, in the year 1809, would ever have listened to a proposal to give them a Tax of six per cent., on the rental of the whole properties in the old and new royalties of this city, as perpetual and absolute owners, although it is possible that, by rigorous exaction, and the progress of the times, the produce might, at some future period, be made to yield £7000, per annum, much more easily than the whole funds in question, or even the whole free revenue of the city, could be made now to yield £750, per annum, to each of the Clergy of Edinburgh? Surely it is enough to affirm, that NO SUCH PROPOSAL EVER WAS MADE, OR COULD BE MADE IN OBTAINING THIS ACT. Any such pretension would have been not less manifestly opposite to the avowed objects of the application to the legislature, than to the provisions made by Parliament for these.*"*

Following out the same subject, the Magistrates go on to say, that not only was no such proposal ever made in a *direct* manner, but that "no such imagination" was ever conveyed to their minds; they did not even *suspect* that the Ministers had any such object in view; † and they conclude by declaring that the asser-

* Pleadings of the Magistrates in their process with the Ministers, page 23.

† It cannot excite surprise that the Town Council were deceived, and that they did not suspect the design of the Ministers in framing this clause in such "a peculiar manner," for after their design was fully explained by themselves in their printed pleadings, the Lord President could not perceive that it *did* accomplish the object which they had in view. In his notes he remarks, "It is said this clause was prepared by the Ministers, and revised by Mr. Mathew Ross. If so, it is very ill worded with a view to their present claim, for certainly it does not make any change, but leaves every thing as it was," and therefore he voted against the claims of the Ministers. This was just what the Town Council were led to believe when they agreed to its insertion. A majority of the bench, however, thought otherwise, but the opinion of the President affords an ample vindication of the integrity of the Council, when they declared, in the most solemn manner, that they never suspected the de-

tions of the ministers in regard to this matter, do not proceed from the love of *truth*, but from the *love of gold*; "that the assertion has no other foundation than a golden dream."

"As usual in such cases, the pursuers [Ministers] have, however, converted their own desires, whether these were seriously entertained at the date of this Act, or have only assumed the appearance of legal claim as owners, since it was passed, into evidence respecting the views of the other parties concerned. In answer, the defenders [Magistrates] have only to say, that *all they have seen or heard* from the proceedings of their predecessors on that occasion, coincides in *authorising them to affirm, that no such imagination was ever conveyed to the understandings of the managers and advisers of the city*. Such of those learned gentlemen whom they consulted, as are now alive, could well bear testimony to this, if necessary. In short, the hold which the pursuers [Ministers] attempt to take here of alleged views and communications, at the date of the Act passed in 1809, HAS NO OTHER FOUNDATION THAN A GOLDEN DREAM."*

The following extract shows the opinion which was formed regarding the history of this celebrated clause, by a gentleman to whom the public are deeply indebted for having examined the subject with great care, and for having given them the benefit of his researches on several occasions :—

"I therefore repeat, that this is *a fraudulent clause*, surreptitiously introduced, contrary to the notice which was given, and to the standing orders of the House of Commons; which, had it been only mentioned in the Committee, would have at once thrown out the bill as a fraudulent attempt to *cheat the community*."—"Immediately after the passing of this Act, a demand was made by the Ministers for an augmentation of their stipends, which being refused, an action was raised by the Ministers against the Magistrates."—"In assaulting each other, they made a full exposure of the *trick* in which they had *both joined against the community*; and which exposure, I am happy to say, is fully recorded in the proceedings of the Court of Session." In their pleadings in this action, "the Magistrates of the day do not deny to the Ministers *the honour* of the introduction of the clause; and they fully agree with the Reverend Gentlemen, on

sign of the Ministers to go farther than to establish the right of the Council to collect six per cent., and to pay reasonable stipends out of it and the other revenues, to *all* the ministers, applying the surplus as they had been in use to apply it to the municipal expenditure of the city.

* Pleadings of the Magistrates in their process with the Ministers, page 23.

the propriety of cheating the public."—"In short, the Magistrates and Ministers can be compared to nothing else than a *couple of robbers*,* who joined together against an unfortunate victim, and after having pilfered him to their heart's content, quarrelled over the division of the spoil."—"I trust no one will imagine, that in what I have considered it my duty as a Councillor to state, I have made any attack upon the Clergy of 1809. As individuals; I know them to have been all men of the highest respectability and honour;† but such, unfortunately, is human nature, that we find men who are above doing a mean or selfish action when acting singly, are much less scrupulous when acting in a body,‡ and when excited by an *esprit de corps*, or the love of their order."§

It would be extremely foolish to expect that a narrative of such facts as these, could be written without giving offence to persons who are prejudiced or who are imperfectly informed on the subject, or who have some real or imaginary interest in raising a clamour about the apparent want of charity, and about the severity which they will believe, or pretend to believe, is mani-

* A distinction should be made between the conduct of the Magistrates and Ministers. The Magistrates, no doubt, joined in the proposal of the Ministers to defraud the public, by taxing them without their knowledge or consent, but after paying to the Ministers moderate stipends, they intended to employ the surplus for the benefit of the public, as they had been in use to employ it, in payment of the municipal expences of the burgh. Their intention was to commit what has been called "a pious fraud;" but the Ministers urged the adoption of the clause, with the *sole view* of putting the *whole produce* of the Tax into their own pockets.

† The Author of this pamphlet has had many opportunities of meeting with several of the city Ministers of the present day, on matters of public business; and he has often expressed what he has always felt, the greatest respect for their integrity and talents. Of all the Ministers of the City in 1809, only three remain; and it is understood that none of them took an active part in matters of business at the period referred to. He would gladly have avoided alluding to the conduct of the Ministers of 1809, if it had been possible, consistently with honest dealing, to pass it over without notice.

‡ Speech of James Aytoun, Esq., Advocate, at a Meeting of the Town Council.—*Scotsman*, 1st Feb. 1834.

§ The Rev. Dr. Muir of St. Stephens, appears to concur in this sentiment. In his speech at the Presbytery of Edinburgh, on the 4th July, expressing his distrust of the proposed Board of Visitors for the Universities, he says, "men often do things in their corporate capacity, from which, as individuals on a point of honour, they would shrink."—*Caledonian Mercury*, 7th July, 1836.

fested in the simple annunciation of some of these *facts*, and in the commentaries which accompany others. The observations of one of the present Ministers of the City, on a case which *he* thought of a similar kind, are so good, that no apology is necessary for their insertion.

"I expect that these statements will be received"—"with a great deal of declamation about their uncharitableness and severity, the respect due to old age, and Christian character, &c. But really the only question worth considering is, whether or not the statements be true, the charges fully established? If they can disprove these charges fully and in detail, of course let them do it; but if they cannot, neither the public nor I will be in the least influenced by vague declamation about uncharitableness or severity."—"The specific charges will stand the most thorough investigation."—"No allegations as to the general excellence of a man's character,* even though these allegations should be well founded and generally admitted, will be held sufficient to invalidate specific charges against him, resting upon competent evidence."†

These remarks, which are so applicable to the present case, were employed by the reverend author for a very different pur-

* In endeavouring to prove the charge of "apostacy and perjury," the reverend gentleman attacks with great virulence one of the Ministers of the Secession Church, who, for upwards of half a century, has had the pastoral charge of one of the largest congregations in Edinburgh. During this long life his usefulness as a minister of the gospel, his unimpeachable integrity, and the manner in which he has discharged all his duties, has procured for him the respect and esteem of all who know him. His accuser, among other charges, says, if he wishes to be believed he must produce other evidence than his own! "At the same time I must tell him plainly that *no one* who knows him chiefly (as I do) from having examined his conduct in regard to the introduction and propagation of New Light views in the Burgher Synod, *will receive his own assertion as conclusive evidence in the matter.*" If he "wishes his statement to *gain general credence*, he had better accompany it with whatever other evidence may be accessible." As a proof how little effect such assertions as these have on an intelligent public, it may be noticed that the congregation of this venerable clergyman who has been, so unceremoniously attacked, exceeds that of his accuser nearly in the ratio of *five to one*, as indicated by the number of seats let. This too, is after he has been 53 years their pastor, while his accuser has all the advantages arising from "recent importation," which, in the city Churches, are neither few nor unimportant; and he has the additional advantage of seat rents nearly one-third lower than those of the Dissenting Ministers.

† Church of Scotland Magazine for September 1835, page 304.

pose. They were intended to justify what few will consider capable of being justified—a gross personal attack on an aged and unoffending minister of another denomination. The essay of which the extracts form a part, has for its title, “Apostacy and Perjury of Voluntary Seceders;” in other words, an essay to prove that a very large proportion of the inhabitants of the City are guilty of “Apostacy and Perjury.” *

The Ministers ultimately prevailed; the Court, *by a majority of one*, found them entitled to the whole produce of the Annuity Tax—the Merk per ton—Lady Yester’s Mortification—and £138, 17s. 9d., from the Ale-duty, until the expiry of the Act in 1837, for the stipend of the Minister of New Greyfriar’s Church, but they rejected their claims to the other revenues. “Upon a suggestion from the bar, the Lord President said, ‘The Ministers must either take their stipends from the Town, *or draw the fund for themselves*. We will never reserve any claim to you. If you have a good claim, it will remain without reservation.’” †

Lord Gillies, who voted for the Ministers, said, with reference to a clause in the Act of 1809—“Looking, therefore, at one and all of these Acts, and keeping in view the use which has followed upon them, I must adhere to the opinion which I formerly gave, *though in the original constitution of the right, I can see nothing of a gift to the extent now likely to be made good.*” ‡

ACTION OF COUNT AND RECKONING BETWEEN THE MAGISTRATES AND MINISTERS.

After the decision in their favour, the Ministers brought an action of count and reckoning, requiring the Magistrates to account for the produce of the funds collected by them during the three years in which the action had been going on. When the statement was produced, the Ministers were astonished to find

* Why does the Reverend Author of the essay, not protest against these “Perjured and Apostate Seceders,” being *allowed* to pay any part of his stipend in the shape of Annuity Tax and merk per ton? The Author of this pamphlet and other two members of this “Perjured and Apostate” Church, occupying premises in the same tenement, pay about £25 a-year of Annuity Tax, or *one-twentieth part of a Minister’s stipend*. By adding the merk per ton, the proportion of the stipend payable by them is much greater.

† Volume, containing process, p. 413.

‡ Speech of Lord Gillies, page 65.

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that "upwards of a *third* of the gross produce" of the Annuity Tax was struck off as irrecoverable arrears, or was absorbed in the expences of collection. In their Answers, they expressed their disappointment in the most violent terms. They accused the Magistrates of not being sufficiently rigorous in collecting a Tax which they believed at the time to be their own, and which they were, in fact, collecting *not* for the Ministers, but, as they believed, for themselves, on behalf of the community; the Ministers being stipendiaries during the progress of the action, which the Magistrates expected to gain. They appear to have acted on the advice given to one of the King's of Israel, by the young advisers whom he consulted—"And he said unto them, what counsel give ye that we may answer this people, who have spoken unto me saying, Make the yoke which thy father did put upon us lighter? And the young men that were grown up with him spake unto him saying, Thus shalt thou speak unto this people that spake unto thee, saying, Thy father made our yoke heavy, but make thou it lighter unto us; thus shalt thou say unto them, My little finger shall be thicker than my father's loins. And now whereas *my father did lade you with a heavy yoke, I will add to your yoke: my father hath chastised you with whips, but I will chastise you with scorpions.*" The Ministers proceed as follows:—

"Now it may be very true, that a considerable number, even of desperate debts, must arise in the course of so extended a collection; but it does appear somewhat extraordinary, that deduction should be claimed of these enormous sums *amounting to upwards of a third of the gross produce*, without exhibiting the slightest evidence, except the naked fact, that the money has not been raised. What would your Lordship think of any other factor, or trustee, or collector, who should put an article of this kind into his accounts? The abatement is so large, and at present so unauthenticated, that the respondents [Ministers] are obliged to call upon the Magistrates, as they hereby do, to state distinctly the nature and the evidence (if there be any) of those circumstances which induced either them or the stentmasters to believe that debts were doubtful, or desperate to an extent, which must have affected *whole streets*, and which cannot be conceived without supposing that thousands of families were reduced almost to beggary."*

* Pleadings of the Ministers in the process with the Magistrates, page 37.

In the course of their inquiries the Ministers ascertained that the Magistrates were in use to levy the Tax on *four-fifths* of the real rent payable by tenants, and that they were in use to value the houses of proprietors at the rate of £8 of rent, for every £100 of purchase money, and to levy the Annuity on the same proportion. They complained loudly of the injustice done to them by this mode of assessment, and contended that, for every £100 which a house in the hands of a proprietor cost, the rent should be valued at £7, 10s., and that the Annuity Tax should be charged accordingly. In those cases, where houses were occupied by tenants, they contended that the Tax should be levied on the full rack rent. In this way they, in effect, proposed that the Tax, which the inhabitants had been in use to pay, when it was levied for the Magistrates, should be increased one-fourth as soon as it came to be levied for the Ministers; or, in other words, that the Annuity Tax should be increased from 6 per cent. to 7½ per cent., on the old valuation.

The Magistrates felt indignant at their rapacity, and answered with becoming spirit, that they never would become the instrument of increasing the burdens of their fellow-citizens; that the increase would not be submitted to by the inhabitants; and they boldly declared in the face of the Court, that if the additional burdens were ordered to be imposed, *they* would "no longer continue to put the Annuity Act into execution;" but would leave the Ministers to manage their own matters as they thought proper. But they shall be allowed to speak for themselves,—

"But even then, it is submitted, the defenders [Magistrates] would have acted very imprudently, as well as illegally, had they attempted to alter the ancient and established mode of assessing and levying the Tax, *by imposing one-fifth more upon all the tenants*. The defenders are persuaded that such a valuation as the pursuers [Ministers] point at, WOULD NOT BE SUBMITTED TO BY THE INHABITANTS, and should it unexpectedly be found that the assessment must be laid on, in the manner proposed by the pursuers, then the defenders [Magistrates] have no hesitation in declaring that they will NO LONGER CONTINUE TO PUT THE ANNUITY ACT INTO EXECUTION, but shall leave it to the pursuers [Ministers] to elect stentmasters and choose collectors for themselves, *in any way they think proper*. But it seems little likely that any such finding will be pronounced in any action, to which *those who are to pay the increased duty, are not parties.*"*

* Pleadings of the Magistrates in the process with the Ministers, page 45.

The Ministers, in continuation, complained bitterly of the number of persons exempted from the Tax on the plea of poverty. The Magistrates made the following admirable answer:—

“The pursuers [Ministers] have found great fault with exempting a number of individuals from the Annuity Tax, on the head of *poverty*. Surely the pursuers cannot be serious in this, considering the very conclusive nature of the apology, and still less can the pursuers blame the Magistrates for exercising so laudable an act of benevolence, when *they believed* that the produce of this tax *belonged to themselves* or to the community. They have hitherto been in use to exempt from this tax such poor householders as could produce evidence of their inability to pay the taxes legally exigible from them. But if the defenders [Magistrates] have been liberal in granting exemption on the head of poverty, so certified, the pursuers [Ministers] have been equally liberal in granting *attestation* to poor householders for the very purpose of procuring the exemption which is now found fault with. For almost the whole that have been relieved have produced certificates signed either by the *Ministers* themselves, their elders, or by some respectable inhabitant who had access to know the situation of the parties. The pursuers, therefore, *ought to observe some degree of consistency in their conduct*, and not assist the one day in *procuring an exemption*, and complain of it the next as *unjust*. It not unfrequently happened that the officers employed in the collection of this tax, have reported that they found, on visiting the miserable habitations of some individuals assessed, the occupiers so very destitute, that the whole furniture would hardly have defrayed the expence of a pawning and sale.” *

The Ministers, of what has been called “the Church of the Poor,” complained that one class of the poor were not obliged to pay the Annuity Tax for the support of that Church, and they referred to the sums collected by government on the houses of the poor,† as a proof that the same parties were able, and ought to be compelled to contribute for the support of the Church as well as for the support of the State. The Magistrates answered their complaint in the following very satisfactory manner:—

* Pleadings of the Magistrates in the process with the Ministers, page 55.

† The Annuity Tax was not levied on houses under £5 of real rent, and as the Act authorised all the houses in the City, “without exemption or exception of any house of whatsoever, holding or nature, the same be of” to be taxed, the Ministers appear to have been very much displeased at the liberal construction of the Act, by which the houses of the poor, under £5 of yearly rent, were exempted.

"The pursuers [Ministers] have appealed to the duty of 4s. on each house, not liable to the house duty or assessed taxes, which they say was passed 'for the very purpose of catching a large class of the community [tradesmen], who, though perfectly able to pay that tax, generally exempted themselves from all public burdens whatever.' The pursuers have been very unfortunate in alluding to this Tax; for if they will apply to those best informed on this subject, (the surveyors and collectors of assessed taxes,) they will inform them that what has been made good from this Tax, never in any one year, defrayed the *expense of assessing and levying the same*, and that it has been attended with more trouble to the official people, than all the other taxes put together."*

They went on to complain, that in the accounts of the Magistrates, "many are said to be eased of part, perhaps one-half, or two-thirds, of the sum stented, without any reason whatever being assigned,—and some because they are 'Quakers.'"+ From this it appears that when the Tax was collected for the Magistrates, they were in the practice of respecting the rights of conscience, by relieving the Society of Friends from payment of a Tax to which they objected on conscientious grounds,‡ but whenever the Ministers became the proprietors, they instantly objected to the exemption.

The Ministers contended that since all these losses were sustained by them through the undue leniency of the Magistrates in not enforcing payment of the Tax with sufficient rigour; from their having authorised it to be imposed on a rental one-fifth less than the rack-rent; and from their having altogether exempted a very considerable number of persons on the plea of poverty, that they should be ordained to account to them, *not* for what they had actually collected, but *for what they might have collected*—if none of the allowances complained of had been made. They summed up all their grievances by estimating the extent of these losses, and they argued that the Magistrates should be obliged to make good the deficiency.

"Without, therefore, going at present into the effect of the il-

* Pleadings of the Magistrates in the process with the Ministers, page 58.

† Volume Containing Process, page 794.

‡ In Manchester, the Society of Friends have been relieved from all payments for Church-rates for many years, without any legal exemption, but merely from the authorities declining to enforce the Tax, or even to send to them for payment.

legal exemption of the Magistrates and their retinue, &c. it may be fairly held that £7400 yearly was the free value of the Annuity for each of the two years in question, and yet the Magistrates account only for £4390 yearly. From this, it will appear, that there is at least £3000 a-year depending on your Lordships' judgment on this branch of the case. The real difference between the parties, *is much greater than this*, for if the tax is to be accounted for, *as it ought to have been levied*, and if there is to be no toleration of these sweeping exemptions, [cases of poverty] and *these enormous* unauthenticated arrears, it is probable that the difference in the respondents' [Ministers] favour *may be doubled.*"

This action was ultimately compromised, and a contract was entered into between the Magistrates and Ministers. By this contract, the stipends from 1810 to 1814, were to be paid with interest at the rate of £480 a-year, and from 1814 to 1824, at the rate of £520; the Magistrates acquiring right to the entire produce of the various Taxes. The Ministers reserved the power of taking the different revenues into their own hands in 1820, if they should think them likely to be more productive than the stipends fixed by the contract.

The conduct of the parties concerned in these proceedings, has been briefly but justly summed up in the following words:—

"The fact is, the citizens, between the two [Magistrates and Ministers] may be said to have fallen amongst thieves, who afterwards quarrelled about the spoil, but none of it was ever returned to the unfortunate sufferers, who are now denounced as impious robbers for endeavouring to get rid of the exaction." *

THE MINISTERS BECOME COLLECTORS OF THE ANNUITY.

In 1820, the Ministers availed themselves of this breach in the contract, and ever since that period, they have become Tax Collectors, receiving the whole produce of the various revenues.

There are no documents in the possession of the Town Council from which it can be ascertained, with mathematical accuracy, the precise sum paid to each of the Ministers *by their factor* from the revenues proper to each year; but there are accounts showing the different sums *paid to their factor*, from which fall to be deducted, his own salary and that of the accountant. In addition

* "The Church its own Enemy," by Adam Black, Esq. page 49.

to these sums, all the expenses of prosecutions incurred by him, which he has not succeeded in recovering from the parties prosecuted, fall to be deducted, together with all extraordinary expenses incurred for the protection of their interests. The sum paid annually for the salary of the factor and accountant, has been £155. If the other expenses be assumed at £205 annually, this will make £360, or a deduction of £20, from the stipend of each Minister. The following table is constructed on this principle, the stipends being always £20 less than the sum paid by the City Chamberlain to their factor. Parties who consider this allowance of £20 too great or too small, can make the necessary corrections to please themselves. In all other respects, the accuracy of the sums may be depended on,* and they include all the arrears collected for the different years, up to the 9th July, 1836.

Year ending.	Stipend proper to each year.			Year ending.	Stipend proper to each year.		
	£	s.	d.		£	s.	d.
1821	560	9	7	1829	605	12	2
1822	624	4	8	1830	575	4	10
1823	655	14	6	1831	521	18	4
1824	687	15	10	1832	538	2	2
1825	663	8	11	1833	505	18	0
1826	651	10	3	1834	495	18	4
1827	547	10	1	1835*	477	19	8
1828	602	4	8	1836*	458	5	8

These large sums were not collected without great resistance on the part of the inhabitants. Poindings, and roupings, and burnings, and captions, followed in rapid succession, and in great abundance. The public at length became so disgusted at the frequency of these exhibitions, that, by a sort of implied compact, no person would purchase the goods which were offered for sale. When the auctioneers appeared at the Cross to sell the

* The *probable* stipends for 1835 and 1836 are ascertained as follows:—The reduction in the produce of the Annuity, arising from the reduction on the rental from 1834 to 1835, will be £322, 15s. The reduction from 1834 to 1836, from the same cause, will be £677, 7s. 2d., as appears from the table at page 90. The produce of these sums, divided by the number of Ministers, has been deducted from the *ascertained* stipends of 1834, and hence the *probable* stipends of 1835 and 1836 have been obtained. The stipends from 1820 to 1834 have been taken from "The Report of the Treasurer's Committee to the Town Council," pages 10 and 11, and the arrears which have been collected since it was prepared, have been added to the sums stated in that Report, the accuracy of which is unquestionable.

pointed articles, they were received with groanings, and hissings, and hootings, and every species of contumely. At length they were obliged to take away the goods without getting a single offer. In this state of matters, imprisonment was resorted to, but this only made matters worse. In 1833, they adopted the plan of proceeding against the parties in arrear in the most expensive manner. For this purpose, hundreds of charges of hornings were taken out, by which means the expences of the prosecutions were often greater than the original debt.

All these prosecutions were conducted without any directions from, or communication with, the Town Council; and when, in consequence of the public clamour which was raised, they resolved to inquire into the matter, and ordered the Factor for the Clergy to make a Return, showing the number of prosecutions, the expences incurred, &c., that gentleman, conceiving that he was responsible to the Ministers *alone* for his proceedings, declined to comply with the order of the Council. On the 4th February 1834, he wrote them, explaining generally the nature of the steps he had taken, and ending as follows:—

“ In conclusion, I think it right for me to state, if a Return, such as is pointed out in Mr. Crooks' motion, be still insisted on, that it will be attended with very considerable labour and expence; and that before proceeding with it, I would feel it to be *my duty* to submit the matter to the Ministers of Edinburgh, who, I have no doubt, would desire to be informed at whose expence, and for what purpose, such a return is ordered.—I am, &c.

(Signed) “ H. INGLIS.”*

There could be no doubt that he might have persisted in his refusal, but it was equally obvious that, since the Town Council had the appointment of the Collector, they were entitled to instruct him to employ any law agent, in future, in whom they had confidence. They had thus *indirectly* the power of putting a stop to any mode of proceedings of which they disapproved, by appointing a new agent. In this sense the law agent employed by their Collector, was their agent. The Committee to whom the letter was remitted accordingly reported as follows:

“ The Committee having considered the foregoing letter, are of opinion that it can admit of no doubt, that the Town Council are entitled to have the Returns called for laid before them; and they cannot approve of the conduct of their Agent in withhold-

* Records of the Town Council, vol. 215, page 229.

ing or delaying to furnish them on any pretence whatever. They consider it their duty to report what has taken place to the Council; and suggest that a most peremptory order should be made for the Returns.* The Council ordered the Returns in the terms recommended, which was shortly afterwards produced, and of which the following quotation from a letter, written by a Member of the Town Council, contains an excellent abstract, and shows the oppressive nature of these proceedings:—

“The Returns show the Annuity prosecutions during the year 1833 only. A busy year it seems to have been with the Prosecutor for the Clergy; and as Mr. Inglis “fears that the Return may not be so complete or accurate as could be wished,” we may presume that there may be a *few* omissions. There are hornings enough, in all conscience, although there should be no more than the Return exhibits. The number of *diligences* used against the inhabitants of Edinburgh for Annuity in 1833, is 512. The number of *persons* against whom the diligences were used, is 768; of these there were prosecuted for sums—

under £1			13 persons.	
from	1 to £2	—	118	—
—	2 to 3	—	134	—
—	3 to 4	—	109	—
—	4 to 5	—	73	—
—	5 to 6	—	59	—
—	6 to 7	—	46	—
—	7 to 8	—	36	—
—	8 to 9	—	21	—
—	9 to 10	—	23	—
—	10 to 11	—	16	—
—	11 and upwards,		120	—

“It thus appears, that more than half of the 768 persons prosecuted for this unequal and oppressive Tax, were due sums under £4. The manner in which the inhabitants have been proceeded against, is no less oppressive than the nature of the Tax itself. Instead of putting a cluster of the debtors in such small sums into the same horning, to lessen the expenses, as it was the agent’s duty to have done, no less than 294 of the 512 diligences were directed against single individuals; 123 more diligences were directed against only *two* debtors; and 55 more against only three persons. Only about a dozen diligences, it would appear from the Return, were directed against so many as four persons.

* Records of the Town Council, vol. 215, page 230.

The expenses already incurred appear to exceed £1000.* But as only about 350 of the 768 persons prosecuted are reported as having paid the Annuity, either in whole or in part, much more expense, it may be expected, will be laid upon those who have not paid, who exceed 400 in number. This is not all, however, of those who have paid the Annuity; only about 45 persons are reported as having paid the expenses incurred; so that above 700 persons are liable to the second prosecution for the expenses incurred in the first; and many of them being very poor persons, from whom payment will probably not be got easily, there will be a large addition to the expenses already caused. What was the motive of raising so many diligences, where only a small number might have included all the debtors, Mr. Ingils, and the persons for whom he acted, best know. I cannot allow myself to think, that it could be either to inflict punishment upon the sufferers, or to produce a harvest of gain from the multiplied prosecutions. But the effect of this mode of proceeding has been oppressive in the extreme.

"At present I have only time for two remarks. I believe this list of prosecution very defective; for I ran my eye over the whole of the names, and missed those of a number of people, whom I knew to have been prosecuted for Annuity. And when we consider the number of prosecutions here admitted, and the far greater number who paid only to save themselves from prosecution, what a proof does it afford of the abhorrence in which the Tax is held!"†

After considering this Return, the Council ordered their Chamberlain, in future, to proceed against all defaulters by small debt warrants, in order to save the enormous expence of prosecutions by charges of horning.

These proceedings appear to have been adopted as if for the very purpose of fulfilling to the letter a prediction hazarded by the Town Council twenty years before, while the action was going on before the Court. They stated in one of their papers, that the Ministers thought them *too indulgent* in collecting the Tax; that if the Court should find the Clergy entitled to it, they would compel the exaction of every shilling that could be

* "The expenses of the prosecutions for the recovery of the Annuity Tax, during the year 1833, amounted to £1127, 8s. 1d.; of which £1056, 8s. 9d., had not been recovered from the parties prosecuted, on 1st January, 1834."—*Report of Treasurer's Committee to the Town Council*, p. 12.

† Letter from William Taft, Esq.—*From the Scotsman of 20th Feb. 1834.*

levied from the inhabitants; that in their hands, it would be more oppressive than tithes in other parts of the kingdom; that they would make the most of it, without any regard to equity, moderation, or the general weal; that their object would ultimately be, after extracting as much as they could from the pockets of the inhabitants, by oppressive exaction, to apply to Parliament for an equivalent sum payable in a less obnoxious manner. Every person who has attended to the past and present aspect of Ecclesiastical matters in Edinburgh, will be astonished at the singular sagacity of the Town Council of 1813, in foreseeing the course which matters would take:—

“The pursuers [Ministers] do, no doubt, more than insinuate that from the year 1661 downwards, *the smallness of the produce* of this fund has been owing to the manner of laying on and collecting the assessment of the Annuity, *which the pursuers [Ministers] evidently conceive to have been much more indulgent than the letter of the law would have warranted.* They now, therefore, propose to establish, that the property of the whole of this fund is vested exclusively in them, and that the defenders [Magistrates] are but their agents and factors. If the pursuers were to succeed, they would thus in future have it in their power to *compel the exaction of the uttermost shilling that can be levied from the inhabitants.* But seventeen individuals, which is the present number of the pursuers, whose income would be chiefly dependent on the produce of such a fund as this, *must, if vested with absolute and exclusive right, be expected to make the most of it.* *The more oppressive its exaction becomes to the community, the greater equivalent will they draw by any PARLIAMENTARY TRANSACTION WHICH MAY BECOME NECESSARY FOR RELIEF.* In the progress and fluctuations of urban property in such a metropolis as this, the size of which has doubled within these 20 years, and is daily increasing, *the distress which may be thus occasioned cannot be easily imagined.* PERHAPS IT WOULD MUCH EXCEED ANY GRIEVANCE THAT WAS EVER FELT FROM TITHES, IN OTHER PARTS OF THE KINGDOM. Equity, moderation, and regard to the general weal, in circumstances like these, *are only to be expected from the Magistrates and Town Council, annually elected to administer the affairs of the city for the other inhabitants and themselves.* It is very likely that this was one great reason *for vesting in them the grant of this annuity, subject to no obligation of accounting.* But whatever were the reasons for bestowing the grant in this manner, it is the obvious duty of the defenders [Magistrates] to support the conditions of the trust vested in them *for behoof of the public.* They can discover no special allocation from the produce of the Annuity to the use of the Ministers, excepting that of 19,000 merks (£1055 11s. 1½d.) *to pay six stipends,*

when the number of the Established Clergy of Edinburgh was meant to be 12 instead of 17, to which it is now increased. By the Act of the 49th of the King, (1809) the produce of this annuity is indeed further, and without any qualification, made legally applicable to pay the stipends of *all the ministers* of the ancient and extended Royalty, and of any new churches, parishes, or charges, that may be erected or disjoined." *

PRODUCE OF THE ANNUITY TAX, from 1810 to 1834.

The next statement shows the net produce of the Annuity Tax for twenty-four years, during which the Ministers had a right to the whole produce, commencing with the year ending at Whitsunday 1810, and ending with the year from Whitsunday 1833 to Whitsunday 1834. Also the stipends of six ministers, and the surplus remaining after complying with the provisions of the act of 1661. The different sums are taken from an official document, approved of by the Town Council, and published by their authority, 17th February, 1835, entitled, "Report of the Treasurer's Committee to the Town Council respecting the Ecclesiastical revenues of the City of Edinburgh." The produce of the Annuity in this Report is stated as collected up to 14th September, 1834, when a considerable amount of arrears was outstanding. Great exertions having been made since that time to collect these arrears, there has been recovered up to 9th July, 1836, the sum of £2108, 19s. 8d.† belonging chiefly to the last two years embraced in the account. In the following statement, all these arrears which have been recovered since September 1834, have been added to the sums stated in the Report of the Treasurer's Committee, consequently the produce of those years is to this extent greater than the sums stated in the Report, and it is possible that small sums

* Pleadings of the Magistrates in their process with the Ministers, page 31.

† The following are the sums which have been collected from 14th September 1834, to 9th July 1836, belonging to the different years for which arrears were outstanding :—

Year	Arrears,	Year	Arrears.
1823	£3 0 0	1829	£ 19 11 1
1824	3 0 0	1830	69 18 10
1825	3 0 0	1831	123 0 3
1826	4 1 6	1832	199 13 0
1827	9 11 6	1833	269 7 10
1828	13 13 1	1834	1391 2 5

may yet be recovered for some of the years, although it is understood that a very large proportion of the outstanding arrears are altogether irrecoverable.

Year ending at Whitsunday.	Net produce of the Annuity.			Stipends of six ministers at £330 for the first 8 years; £380 for the succeeding 8 years, and £425 for the last 8 years.			Surplus levied from the inhabitants, and divided among the ministers, in consequence of the smuggled clause in the Act of 1809.		
	£	s.	d.	£	s.	d.	£	s.	d.
1811	5081	16	0	1980	0	0	3101	16	0
1812	5131	9	0	1980	0	0	3151	9	0
1813	5317	5	1	1980	0	0	3337	5	1
1814	5526	7	6	1980	0	0	3546	7	6
1815	5585	1	11	1980	0	0	3605	1	11
1816	5583	9	7 $\frac{1}{2}$	1980	0	0	3603	9	7 $\frac{1}{2}$
1817	5600	0	7	1980	0	0	3620	0	7
1818	5651	1	6	1980	0	0	3671	1	6
1819	6345	2	1 $\frac{1}{2}$	2280	0	0	4065	2	1 $\frac{1}{2}$
1820	6968	10	3	2280	0	0	4688	10	3
1821	7765	18	6 $\frac{1}{2}$	2280	0	0	5485	18	6 $\frac{1}{2}$
1822	7943	13	6 $\frac{1}{2}$	2280	0	0	5663	13	6 $\frac{1}{2}$
1823	8024	13	9	2280	0	0	5744	13	9
1824	8103	1	6 $\frac{1}{2}$	2280	0	0	5823	1	6 $\frac{1}{2}$
1825	8429	14	4 $\frac{1}{2}$	2280	0	0	6149	14	4 $\frac{1}{2}$
1826	8334	9	3	2280	0	0	6054	9	3
1827	8447	13	4	2280	0	0	6167	13	4
1828	8488	13	10 $\frac{1}{2}$	2280	0	0	6208	13	10 $\frac{1}{2}$
1829	8294	8	9	2550	0	0	5744	8	9
1830	8385	4	11 $\frac{1}{2}$	2550	0	0	5835	4	11 $\frac{1}{2}$
1831	7917	0	7	2550	0	0	5367	0	7
1832	7499	13	7 $\frac{1}{2}$	2550	0	0	4949	13	7 $\frac{1}{2}$
1833	7404	3	3	2550	0	0	4854	3	3
1834	7402	5	8	2550	0	0	4852	5	8
£	159,230	18	7	53,940	0	0	115,290	18	7

In this statement, the stipends for the last 8 years have been calculated at £330, because that was the sum paid during the progress of the action with the Ministers, when the Lord President, in 1813, stated that he was satisfied no abuse existed with regard to the amount; that "the augmentation has hitherto kept pace with *other stipends*," and he presumed it would do so in future. The stipends for the last 8 years have been calculated at £425, because the rich Corporation of the City of Glasgow have paid their Ministers at that rate; but it is to be remembered that in Glasgow, 10 Ministers suffice for a

population of 89,000, while in Edinburgh there are 18 Ministers for a population of 55,000, consequently the population assigned to *one* Minister in Glasgow, is equal to that assigned to *three* Ministers in Edinburgh. The duties of the Ministers of Glasgow must therefore be much more laborious than those of their brethren in Edinburgh, and it is well known that house rents, and some other necessary items of expenditure, are higher in the former city than in the latter. The stipends for the eight intermediate years, have been calculated at £380, as a medium sum between the other two rates, and also on the supposition that if the Act of 1661 had not been modified by the Act of 1809, and if any application had been made to the Court to fix stipends for the six Ministers, to be paid out of the Annuity fund, as in the case of Montrose, they would not, under the circumstances, have fixed a higher sum than £380.

It appears from the above statement, that after allowing £53,940, for the stipends of the six Ministers, which is £3273, 8s. more than *twice* 19,000 merks each year, the surplus which the Clergy were enabled to divide among themselves from the proceeds of the Annuity Tax, in consequence of "the smuggled clause," in the Act of 1809, amounted, in 24 years, to the enormous sum of £115,290, 18s. 7d. and during the last 12 years, the surplus has been at the rate of A QUARTER OF A MILLION sterling, in 45 years.

The net produce shown by the table, after deducting all all expenses, having been £159,230, 18s. 7d., and the allowance for the stipends of six Ministers £53,940, it is evident that, by following out the principles sanctioned by the Supreme Court in the case of Montrose, if "the smuggled clause" had not been in existence, the Annuity Tax might have been reduced to the rate of $2\frac{1}{2}$ per cent. *during the whole of this period*, and the produce would have been more than sufficient for the burdens imposed upon it by the Act of 1661. For the last 12 years, 2 per cent. would have been more than sufficient, consequently the difference between these rates and 6 per cent. of direct taxation, to which the inhabitants have been subjected, has been taken from them by the crafty management of the Clergy:—*first*, in deceiving the public by getting a clause inserted in the bill, without their knowledge or consent, which was altogether beyond the notices required by Parliament to be given for their information as to the nature of the alterations proposed to be made; and, *second*, in outwitting the Town Council by getting

their consent to the insertion of the clause, under the belief that it sanctioned their right to apply the Annuity as they had been in use to apply it, *both to civic and ecclesiastical purposes*, while the clause was so artfully framed by the Ministers, that although it *appeared* to sanction the usage in *both cases*, it was *intended by them* to sanction the usage *only so far as* regarded the application of the fund to *ecclesiastical purposes*.

It will be observed, that the Annuity for the year *ending at* Whitsunday 1834, was payable, and in course of collection, six months before that date,—at Martinmas 1833,—and that the same rule applies to all the other years, consequently more than $2\frac{1}{2}$ years have been occupied in collecting the arrears proper to the year *ending at* Whitsunday 1834; more than $3\frac{1}{2}$ years in collecting those proper to 1833; and more than $4\frac{1}{2}$ years in collecting those proper to 1832; so that there is no probability of any addition of importance being made to the produce of those years from continued exertions, to collect the arrears still outstanding.

REDUCTION IN THE RENTAL OF THE CITY.

From the reduction in the rental of the City, since the year ending at Whitsunday 1834, the produce for the years ending respectively at Whitsunday, 1835, and at Whitsunday, 1836,* which are still in course of collection, will be much less than that of 1834. This is proved by the following statement :—

Year ending at Whitsunday.	Rental of the City, according to the surveys for the Annuity, during the last 3 years.	Reduction in the rental of the City, since 1834.	Reduction on the gross amount of Annuity, leviable since 1834.
	£ s. d.	£ s. d.	£ s. d.
1834	177,686 13 4		
1835	168,750 11 8	6927 1 8	415 12 6
1836	160,306 10 0	17,380 3 4	1042 16 2

These reductions on the *gross amount* of the assessment will not make such a large reduction on the *net produce*, because

* The reduction in the rental from 1830 to 1836, has been £31,011, 16s. 8d.; consequently the reduction on the gross amount of the Annuity leviable, has been at the rate of £1800, 14s. 3d. per annum, or rather more than £100 a-year on the stipend of each minister; and this is exclusive of the reduction arising from the falling off in the mark per ton, and the total extinction of the payment from the Ale duty of £100, 17s. 9d., which was originally granted for the entire stipend of the Minister of the New Greyfriar's Church, when all the other ministers were in receipt of the same sum as fixed stipends. The Ale duty act expires in 1837, when this payment terminates.

part of it would have been *lost* in irrecoverable arrears if no reduction had taken place. Hence it would not give a correct view of the revenue of 1835, if L.415, 12s. 6d., being the reduction on the gross assessment of that year, were deducted from the net produce of 1834.

FUTURE AVERAGE RENTAL OF THE CITY.

The net produce of the Annuity for 1835 and 1836 may be ascertained with great accuracy by taking the aggregate gross rental of the City, for the three years ending respectively at Whitsunday 1830, 1831, and 1832, for which all arrears, presently outstanding, must be held to be quite desperate, being on an average, $5\frac{1}{2}$ years past due, and comparing the amount with the aggregate net produce of the Annuity for the same period. By the application of the rule of three, the net produce of these two years, for which the collection is presently in progress, may easily be determined. The aggregate gross rental for the three years, was £567,382, and the aggregate net produce of the Annuity, £23,802; from which, it is easy to find the probable net produce for any future years for which the rental may be given, as is done in the following table.

But perhaps the most important question is *not* what has the Annuity Tax produced in *former* years, but what will it produce in *future* years? What would it be worth as a permanent Annuity, if held without any defect in the title? To determine this question with any thing approaching to accuracy, would require a minute acquaintance with the past and present value of property in Edinburgh. After consulting several of the public surveyors, and a number of proprietors and professional gentlemen, frequently employed in valuing property, the result of a careful consideration of their opinions is, that since the year 1829-30, when from the great advance in rents, and the extensive speculations in building, which had been going on during the preceding ten years, the gross rental of the City had attained its highest amount, the reduction in the value of property and in

* Since this was in types, the Select Committee of the House of Commons have reported, that the stipends of the Ministers should be fixed at £500, and be made payable out of the common good of the City, making up any deficiency that may arise by a *disguised* ecclesiastical assessment, *to be called* an assessment for the support of the Municipal Government of the Burgh. Hence the inhabitants have a deep interest in inquiring into the *present value* of the claims of the Ministers.

rents, has, on an average, been equal to one-third, or 33½ per cent., and that the rental is still falling. At the same time, there is reason to believe that the surveyors for the Annuity, in numerous instances, did not assess at the very highest rate, which they were entitled to charge; and, therefore, a reduction of 25 per cent. from *their* valued rental, for the year ending at Whitsunday 1830, may be considered a fair estimate of the probable rental of the royalty of the city in future, taking the average of a number of years.* The reduction has not reached this point as yet—partly from the difficulty which formerly existed of getting the stent-masters to lower the rental which was once entered in their books, from some doubts as to their powers, especially as regarded proprietors, and partly because from the assessment being made in Scotch money, and no notice being left with the parties of the rate at which they were assessed, until payment was called for, they had not all the advantages in getting redress for overcharges to which they were fairly entitled. All these difficulties were removed last year. The stent-masters are now authorised and required by the Town-Council to assess uniformly at the rate of four-fifths of the real rent for the time being. By the same authority, the rental is stated in sterling money; and when the survey is made, a written notice is left at every house, mentioning the sum at which it is proposed to be rated, and pointing out in what way redress may be obtained, in the event of there being any overcharge. The adoption of these improvements last year, was felt as a great benefit, and there can be no doubt that when they are generally understood, they will operate, in connection with the depreciation in property which is still going on, in reducing the rental to the extent which has been assumed as probable. In the following statement, it is, therefore, assumed, in calculating the future probable produce of the Annuity,—*first*, That a deduction of 25 per cent. from the rental of 1830, will fairly indicate the *average future rental*; and, *second*, That the same proportion of the Annuity exigible on this reduced rental, will be collected as was collected of the Annuity exigible on the rental for the three years ending in 1832. The calculation has been made on the same principles as for the years ending

* Several additions were made to the boundaries of the royalty within the last ten years, but none of any importance which were not included in the rental for the year 1830.

respectively at Whitsunday 1835, and 1836, which have been already explained.

Year ending at Whitsunday.	Valued rental of the city, according to the surveys for the Annuity for the different years.			Net produce of Annuity, after deducting irrecoverable arrears and expenses of Collection.		
	£	s.	d.	£	s.	d.
1830	191,318	6	8	8385	4	11 ³ / ₄
1831	190,372	10	0	7917	0	7
1832	185,691	13	4	7499	13	7 ¹ / ₂
1833	182,517	18	4	7404	3	3
1834	177,686	13	4	7402	5	8
1835	168,759	11	8	*7079	10	8
1836	160,306	10	0	*6724	18	6
Future probable rental, assumed at 25 per cent, less than that of 1830, which was the highest year, - - - -	*143,488	15	0	*6019	8	0

It appears, then, from the above statement, that the future value of the Annuity Tax, supposing it to be held by an unquestionable title, may be stated at £6019, 8s., assuming that the resistance to its payment does not become more general than it was in 1830, 1831, and 1832. This is, perhaps, assuming too much, there being reason to believe, that the resistance has increased, is increasing, and will continue to increase while this or any other Tax for ecclesiastical purposes continues to be levied.

FUTURE STIPENDS.

If these calculations be correct, and it is believed their accuracy will not be disputed by any impartial person who has carefully considered the subject, the probable future stipends for the average of a number of years, may be easily ascertained. The produce of the Annuity is calculated to yield at the utmost £6019, 8s. The Merk per ton has been valued by Mr. La-

* It should be kept in mind, that although the *four sums* marked thus*, are matters of *computation*, founded on what it is believed, will be admitted by all competent judges to be fair principles, *all the other sums* in the table, are matters of *absolute certainty*, about which there can be no disputes.

bouchers, with the sanction of government, at £2000. The payment from the Ale-duty is by the Act declared to be given only for a term of years, and that it shall be paid until 1837, "and no longer." Lady Yester's Mortification will be payable at 15s. per pound, like all the other debts of the City, and will yield £10, 8s. 4d., per annum. The Merk per ton, leviable at Port-Hopetoun, and the Merk per pack leviable in the City, which produced on an average of years, L.22, 12s. 10d. annually,* being branches of the Leith Merk per ton, will be discontinued, being included in the liberal allowance of L.2000 from the Leith revenues. These are all the funds to which the Clergy make any claim. The following is an abstract:—

Annuity Tax,	-	-	-	£6019	8	0
Compensation for merk per ton,	-	-	-	2000	0	0
Lady Yester's Mortification,	-	-	-	10	8	4
						<hr/>
						£8029 16 4

Subject to the deduction of,—

Factors' salary, say	-	£105	0	0		
Accountant,	-	35	0	0		
Expences of prosecutions not recovered, and other professional charges, say, on an average,		160	0	0		
				<hr/>	300	0 0
				<hr/>		
				£7729 16 4		

This sum, divided among 18 ministers, gives 429 8 8 $\frac{1}{2}$

It appears then, that the value of the future stipends of the Ministers, supposing that the Annuity Tax to be held by the most unexceptionable title in the world, would not exceed L.429, 8s. 8 $\frac{1}{2}$ d.; consequently any payment to them, beyond this sum, is an addition to their future stipends.

WORKING OF THE ESTABLISHED CHURCH IN EDINBURGH.

If an Established Church, supported on Compulsory principles, had been an instrument of Divine appointment, for the promotion of Christianity, Edinburgh would have afforded a splendid example of the benefits resulting from the system. These benefits would have been displayed with such overwhelming effect that the appeal to the judgment of mankind would have been

* Report of Treasurer's Committee, page 12.

irresistible. It has always been a favoured spot, cultivated with peculiar care, according to the most approved methods at present recommended by the friends of the Establishment. For the last two hundred and fifty years, the support of the Church appears to have given more trouble and anxiety to the authorities, and to have called for greater sacrifices on the part of the people, than any other matter connected with the welfare of the City. The number of its Ministers has been constantly increasing, and has always been greater in proportion to its population, than in any other town or district in the kingdom, as will be apparent from the following tabular statements :—

Table showing the population of the Ancient Royalty of the City of Edinburgh, with the number of Ministers, and the population to each minister during the last two centuries.

Year.	Population.	Number of Ministers.	Population to each Minister.
1570	Unknown	John Knox.	Unknown
1590	Unknown	3	Unknown
1634*	25,355	6	4225
1688*	30,050	12	2504
1722†	25,500	16	1593
1801‡	20,658	15	1377
1811‡	22,578	15	1505
1821‡	29,850	14¶	2132
1831‡	28,196	13**	2168
1836§	25,000	13	1923

The population for 1570, and 1590 would have been a valuable addition to the table, but it could not be procured.

* Ascertained by the number of houses, allowing five individuals to each house.—*Maitland*.

† “ In 1722, the population of the City then, as now, divided into Nine Parishes, and having 16 Ministers, appears to have amounted to little more than 25,000.”—*Report of Burgh Commissioners*, p. 296.

‡ Ascertained by Parliamentary census.

§ Ascertained from the known decrease since 1831, caused by the operations of the Commissioners of Improvements, and other causes.

|| This decrease was caused by transferring one Minister to St. Andrew's Church, in the extended Royalty.

¶ This decrease was caused by transferring one Minister to St. George's in the Extended Royalty.

** This decrease was caused by transferring one Minister to St. Stephens in the Extended Royalty.

Table showing all the towns and parishes in Scotland having a population exceeding 10,000, with the number of families in each town, the number of Ministers, and the number of families to each Minister, according to the Parliamentary census of 1831, allowing five* individuals to each family.

	Population.	Ministers.	No. of Families to each Minister.
Edinburgh, Ancient Royalty ...	28,196	13	434
Edinburgh, Ancient & Extended Royalty,	55,232	18	614
Inverness,	14,324	3	955
Perth,	20,016	4	1001
Dumfries,	11,606	2	1060
Montrose,	12,055	2	1205
Kilmarnock,	18,093	3	1206
Aberdeen,	58,019	8	1450
Dunfermline,	17,068	2	1607
Leith,	25,855	3	1723
Glasgow Royalty,	89,847	10	1797
Greenock,	27,571	3	1838
Paisley,	57,466	5	2299
Falkirk,	12,743	1	2549
Gorbals, Glasgow,	35,194	1	7039
West Kirk, Edinburgh,	70,887	2	7088
Barony, Glasgow,	77,385	1	15,477
General Average, ...		1	2902

The Ancient Royalty, in particular, ought, according to the theory of the leading friends of the Establishment, to be a perfect pattern of a well cultivated garden,—a paradise amidst the surrounding moral wilderness. If an Established Church, with a large number of Ministers, be a blessing, the inhabitants of the Ancient Royalty have had that blessing showered down upon them in six-fold abundance. The last table shows that, in proportion to its population, it has more than double the number of

* This is a little above the average number of persons to a family, especially in districts inhabited chiefly by the poorer classes. But the population of the hospitals, work-houses, and other public institutions in large towns, being always included in the total population, it is conceived that when the proper allowance is made for these, the number of families to each Minister, *including all the Dissenters*, will not much exceed what is stated in the table. Four and a half persons to a family, is *under* the general average. In two of the poorest parishes in Edinburgh, the population is little above four persons to each family. In two of the richest, it is above six to each family.

Ministers of the most favoured town in the kingdom; and that it has six times the *average* number of all the other large towns and parishes. Is it, then, remarkable for morality and religion? By no means. Every one acquainted with it will admit, that taking the average of both districts, it is decidedly inferior to the West Church Parish, which has two Ministers of the Establishment to a population of 70,887. But perhaps the Established Church has a greater number of adherents in the Ancient Royalty, than in the other parts of the City? The very reverse of this holds true; it has fewer adherents in the Ancient Royalty, than in any other part of the City or suburbs. The Return published by the Town Council in February last, shows that while 5310 seats were let to inhabitants of the Extended Royalty, having five Ministers to a population of nearly 30,000, there were only 1070 seats let to inhabitants of the Ancient Royalty, having 13 Ministers to a population of 25,000; and 3262 seats were let to inhabitants of the West Church Parish, in addition to all that were let within its own boundaries. These results are admirably described in the eloquent language of the Editor of the *Scotsman*.

“ The astounding fact that only 1070 persons from all the Nine Parishes of the Old Town have sittings in any one of the Established Churches, has produced—as well it might—universal amazement. The peculiar excellence of an Establishment, Dr. Chalmers says, consists in its character of a *home mission*. It is an agency not for meeting a voluntary demand for religious instruction, but for *creating a demand*, where it does not exist! Well, here is a *home mission of Thirteen Established Clergymen*, paid nearly £500 a-year each—and what demand for instruction have they created—how many heathens have they excavated—what number of hearers have they procured from their nine parishes—JUST 1070 OUT OF A POPULATION OF 25,000!! What an admirable machine an Established Church is—how *cheap*, and how *efficient*—for dispensing religious instruction! But more wonderful still—Dr. Chalmers has been assuring us these two years, that the existing nine churches are not enough for this *destitute* population, and he has actually recommended, most strenuously, the building of three or four in addition! Surely the eyes of calm and sensible men will now be opened to the real nature of these ridiculous schemes.”

Of these 1070 seats only 325 were let to *parishioners*; all the others being let to persons who resided in other parishes of the same district, as appears from the following statement, made up

in February last from the Church-seat books of the City which places the virtues of what has been called "the parochial system," in a very ludicrous light.

Let to Parishioners.		Let to Parishioners.	
Tolbooth Church, -	76	Brought forward,	270
Tren do. -	90	Old Greyfriar's Church,	18
New Greyfriars do. -	39	College do. -	18
Lady Yesters' do. -	43	New North do. -	17
High Church, -	22	Old Church, -	2
Carried forward,		Total,	
270		325	

But the Established Church has not merely been inefficient as a Missionary Church in making inroads on heathenism. It has not even been able to *stand still*. The superior zeal and energy of the Voluntary Churches have been gradually "*shortening* her cords and *weakening* her stakes," until she has become so crippled and decayed that, what remains of her, is little more than the skeleton of her former greatness. As the number of her Churches and the number of her Ministers have *increased*, the number of her people have *diminished*. But much as she is reduced, enough still remains to show the difference between the period of her youthful vigour and the period of her declining old age.

The accelerated velocity which she has acquired, in her downward course, has obliged her to leave behind *six-sevenths* of the original number of her adherents. Comparing the population of the Ancient Royalty, about two centuries ago, with that of the same district at present, there are many reasons for believing that it was very nearly equal at both periods. But about the year 1625, when there were four Parish Churches, with six Ministers, there were about 8000 communicants;* while in 1836, when there are nine Parish Churches, with 13 Ministers, there is reason to believe that the number of communi-

* This is stated on the authority of one of the most talented and accomplished scholars among the Clergy of the Church of Scotland, whose knowledge of the early history of the Church is generally allowed to be unrivalled. A few weeks ago at a meeting for the transaction of public business, at which a number of members of the Town Council were present, an opinion was expressed by the author, founded on researches which he had made, that the population of the city must have been as great in 1625 as in 1836. The reverend gentleman alluded to, said he had long ago formed the same opinion from other data, viz., the Records of the Kirk-sessions, from which it appeared that, at the period referred to, there were usually about 2000 communicants in each of the parish Churches. It is matter of history that there were *few* parish Churches and *six* ministers.

cants does not exceed 1150! This is allowing one communicant for every seat-holder, and 80 in addition for those Churches in which the number is said to exceed the number of seat-holders.

But even including the population of the Extended Royalty, and allowing one communicant for each of the seats taken, the total number out of a population of 55,000, with Thirteen Churches and Eighteen Ministers, would be 6460, or one-fifth less than the number in 1625, when the population was 25,000, having only four Churches and six Ministers.

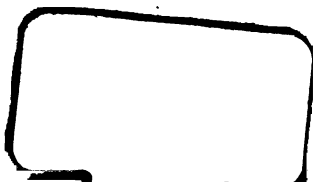
And is this all that Christianity has *gained* from the good intentions of her friends, in supporting and endowing her with all the authority and with much of the wealth of the State? Is this what she has *gained* from the rigorous collection of taxes for her support—from the poundings, and roupings, and arrestments—from the quartering of soldiers on the inhabitants as a punishment for refusing to pay—from all the hornings and captions—and imprisonments, which have taken place during the last two centuries? Is there any man who believes that if all Endowments had been abolished in 1625, when there were 8000 communicants in connection with the Church—leaving Christianity to depend upon the goodness of her cause, and the voluntary support of her friends—is there any man who believes that, after the lapse of two centuries, the communicants in connection with this Voluntary Church, or with any other denomination of Christians, would have been reduced to a *greater* extent than to one-seventh of their original number? If it be admitted, that the reduction would not have been *greater* than this, then it follows that the Establishment has been *useless*; that all the money which has been lavished for its support, has been thrown away, and that all the Compulsory means which have been employed have produced no other effect than that of irritating the people. But if it be admitted, that the reduction in the number of communicants would have been *smaller* “if these artificial crutches”—the State Establishment—had been removed, then it follows, that the Endowment of one sect of Christians at the expence of all the other sects, besides being unjust in principle, has been *worse than useless in its effects*; that it has operated as a powerful drag in retarding the diffusion of the Gospel, although intended to facilitate its progress.



EX 7-1024



MAY 7-1924





FX 7-1824

